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Express, Inc. and William E. Scanlon  
8

9 UNITED STATES DISTRICT COURT

10 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION  
11

12 SIGIFREDO PEREZ JR., individually and on  
behalf of all others similarly situated and on  
13 behalf of the general public,

14 Plaintiff,

15 v.

16 SIERRA MOUNTAIN EXPRESS, INC., a  
limited liability company, WILLIAM E.  
17 SCANLON, and DOES 1 through 10,  
inclusive,

18 Defendants.  
19

Case No.

[Sacramento Superior Court Case No. 34-  
2020-00279284]

WILLIAM E. SCANLON'S NOTICE OF  
REMOVAL OF ACTION TO FEDERAL  
COURT PURSUANT TO 28 U.S.C. 1331,  
1441 & 1446 [Federal Question]

[State Court Complaint Filed: May 21, 2020]

1 TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR  
2 THE EASTERN DISTRICT OF CALIFORNIA, AND TO ALL PARTIES AND THEIR  
3 ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE that Defendant WILLIAM E. SCANLON hereby files this  
5 Notice of Removal of the instant action that is now pending in the Superior Court of the State of  
6 California in and for the County of Sacramento, Case No. 34-2020-00279284, to the United States  
7 District Court for the Eastern District of California pursuant to 28 U.S.C. §§ 1331, 1441(c), and  
8 1446.

9 **I. STATEMENT OF JURISDICTION**

10 1. Removal jurisdiction exists because this Court has original jurisdiction over "all  
11 civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. §  
12 1331. Where state law claims, such as those asserted in this action, are completely preempted,  
13 removal to federal court is proper. *Beneficial Natl. Bank v. Anderson*, 539 U.S. 1, 7-8 (2003).

14 **II. VENUE**

15 2. Venue is proper in the United States District Court for the Eastern District of  
16 California because Plaintiff filed his action in the Superior Court of the State of California, County  
17 of Sacramento, which is located within this District. 28 U.S.C. § 1446(a); *see also* 28 U.S.C. §  
18 84(b).

19 **III. CLAIMS AND PROCEDURAL HISTORY**

20 3. On May 21, 2020, Plaintiff Sigifredo Perez ("Plaintiff"), individually and on behalf  
21 of all persons similarly situated, filed a Class Action Complaint in the Superior Court of  
22 California, County of Sacramento, Case No. 34-2020-00279284 (the "Complaint"), naming Sierra  
23 Mountain Express ("SME") as the sole Defendant. True and correct copies of the Summons and  
24 Complaint in this case are attached hereto as **Exhibit A**.

25 4. On September 2, 2020 Plaintiff filed a First Amended Class Action Complaint (the  
26 "FAC"), adding William E. Scanlon ("Scanlon") as a Defendant. A true and correct cope of the  
27 First Amended Complaint is attached hereto as **Exhibit B**.

28 5. In the FAC, Plaintiff asserts the following causes of action against SME and

Scanlon (collectively, "Defendants"): 1) Failure to Pay Minimum Wages; 2) Failure to Provide Meal Periods; 3) Failure to Permit Paid Rest Breaks; 4) Failure to Pay All Wages to Piece-Rate Workers for Time Spent in Rest Breaks; 5) Failure to Pay Wages Upon Separation of Employment; 6) Failure to Pay Wages Within the Required Time; 7) Failure to Provide Accurate Itemized Wage Statements; 8) Failure to Reimburse Necessary Business Expenses; 9) Failure to Refrain from Unlawful Deductions; 10) Violation of California Business and Professions Code §§ 17200, *et seq.*; and 11) Enforcement of Labor Code § 2698 *et seq.*

6. Defendants deny any liability whatsoever under any theory and in any amount, and further believe the allegations of this lawsuit are demonstrably false. Solely for purposes of the removal notice, Defendants rely on the allegations of the FAC to satisfy the requirements of removal under 28 U.S.C. § 1331 and 28 U.S.C. § 1367(a).

7. Scanlon has not yet been served with a Summons and/or with the FAC in the State Court Action. As such, this Notice of Removal is timely filed because the thirty (30) day timeline within which Scanlon may file this Notice of Removal has not yet commenced. *See* 28 U.S.C. § 1446(b); *see Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-348.

8. Pursuant to 28 U.S.C. § 1446(b)(2)(C), Defendant SME joins in and consents to the removal and has filed an express Consent to and Joinder in Removal concurrently herewith.

9. On October 6, 2020, Defendants filed an Answer to the FAC in the State Court Action, including a general denial and affirmative defenses. A true and correct copy of Defendants' Answer is attached hereto as **Exhibit C**.<sup>1</sup>

10. Defendants will give written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d). A copy of this notice of removal will also be filed with the clerk of the Superior Court of the State of California for the County of Sacramento.

11. The Summons and Class Action Complaint (Exhibit A), First Amended Complaint (Exhibit B), SME's Answer (Exhibit C), along with the additional documents attached as **Exhibit D** (Notice of Case Management Conference and Complex Case Management Procedures,

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<sup>1</sup> As of the time of filing this Notice of Removal, Defendants have not yet received the conformed copy of Defendants' Answer back from the State Court.

1 Alternative Dispute Resolution Information Package, Notice and Order of Complex Case  
2 Determination, Civil Case Cover Sheet, Declaration of Demurring or Moving Party in Support of  
3 Automatic Extension), constitute all pleadings, process and orders served upon and/or received by  
4 Defendant SME and/or Defendants' counsel and are attached hereto in accordance with 28 U.S.C.  
5 § 1446(a).

6 **IV. FEDERAL QUESTION JURISDICTION**

7 12. Defendant Scanlon is the President and Chief Executive Officer of SME, which is a  
8 federally-regulated authorized motor carrier engaged in the business of arranging for the transport  
9 of new automobiles on behalf of various auto manufacturers.

10 13. The new automobiles are transported by independently contracted drivers operating  
11 large tractor trailers between various terminals, auto dealerships, and/or ports located throughout  
12 California and outside of California.

13 14. At all relevant times, Plaintiff was one such owner/operator of a truck who  
14 provided auto transport services to Defendant SME pursuant to an Independent Contractor  
15 Equipment Lease Agreement.

16 15. Defendant SME is a licensed motor property carrier, holding United States  
17 Department of Transportation License No. 365516, bringing it and the drivers operating under its  
18 licensing authority within the regulatory ambit of the Motor Carrier Safety Act of 1984 and the  
19 Federal Motor Carrier Safety Regulations (i.e., 49 C.F.R. Parts 350-399).

20 16. This Court has original jurisdiction under 28 U.S.C. § 1331, and this case may be  
21 removed pursuant to the provisions of 28 U.S.C. § 1441(c), in that it is a civil action that presents  
22 a federal question.

23 17. This Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1331  
24 because the causes of action alleged by Plaintiff in the FAC arise directly under federal law, i.e.,  
25 the Motor Carrier Safety Act of 1984 and Federal Motor Carrier Safety Regulations, or are  
26 transactionally-related to the federal claims in that they all relate to the circumstances surrounding  
27 and arising out of Plaintiff's driving services for SME.

28 18. Removal jurisdiction based upon a federal question exists when a federal question

1 is presented on the face of a plaintiff's complaint. *See Caterpillar Inc. v. Williams*, 482 U.S. 386,  
 2 392 (1987). An exception to the well-pleaded complaint rule exists where a federal statute wholly  
 3 displaces one or more state law causes of action through complete preemption. *Aetna Health Inc.*  
 4 *v. Davila*, 542 U.S. 200, 207-08 (2004). Under this doctrine, although Plaintiff's FAC purports to  
 5 assert only state-law causes of action, since three of those causes of actions are entirely  
 6 encompassed by the Federal Motor Carrier Safety Regulations, Hours of Service of Drivers, 49  
 7 C.F.R. §§ 395.1-395.38 ("FMCSA's HOS Regulations"), the FAC is converted from a state law  
 8 complaint into a federal claim for purposes of the well-pleaded complaint rule.

9 19. Plaintiff's second and third causes of action allege that Defendants failed to provide  
 10 Plaintiff and those similarly situated with meal periods and rest breaks in accordance with  
 11 California Labor code §§ 226.7 and 512. Plaintiff's fourth cause of action alleges that Defendants  
 12 failed to pay all wages for time spent in rest breaks separate from any piece-rate compensation in  
 13 accordance with California Labor Code § 226.2.

14 20. The Motor Carrier Safety Act of 1984 contains an express preemption clause that  
 15 preempts State laws on commercial motor vehicle safety which states: "A State may not enforce a  
 16 State law or regulation on commercial motor vehicle safety that the Secretary of Transportation  
 17 decides under this section may not be enforced." 49 U.S.C. § 31141(a). Moreover, the Secretary  
 18 of Transportation has the authority to preempt State laws and regulations on commercial motor  
 19 vehicle safety that are additional to or more stringent than Federal regulations if they have no  
 20 added safety benefit; are incompatible with Federal regulations; or would cause an unreasonable  
 21 burden on interstate commerce. 49 U.S.C. § 31141(c).

22 21. On December 21, 2018, the Federal Motor Carrier Safety Administration  
 23 ("FMCSA" or the "Agency") granted the petition submitted by the American Transportation  
 24 Association ("ATA") requesting a determination that the State of California's Meal and Rest Break  
 25 rules are preempted under 49 U.S.C § 31141(c) as applied to commercial motor vehicle drivers  
 26 subject to FMCSA's HOS Regulations. 83 Fed. Reg. 67470 (Dec. 28, 2018).

27 22. In granting the petition, the FMCSA determined that California's meal and rest  
 28 break laws offer no safety benefit beyond the Federal regulations governing driver-time limits,

1 fatigue and coercion. The Agency also determined that enforcement of the meal and rest break  
2 laws results in increased operational burdens and costs. Accordingly, the Agency concluded that  
3 California's meal and rest break rules are expressly preempted by FMCSA's HOS Regulations  
4 pursuant to 49 U.S.C § 31141 and may no longer be enforced with respect to drivers of property-  
5 carrying commercial motor vehicles subject to FMCSA's HOS Regulations.<sup>2</sup>

6 23. Plaintiff and putative class members, as drivers of property-carrying commercial  
7 motor vehicles, are subject to FMCSA's HOS Regulations. Pursuant to the FMCSA's December  
8 2018 ruling, Plaintiff's claims are therefore preempted under 49 U.S.C. § 31141.

9 24. Although set forth as state-law causes of action, the FAC, in fact, attempts to  
10 adjudicate rights and protections that are substantively claims under the Federal Motor Carrier  
11 Safety Regulations. Accordingly, because Plaintiff's meal and rest break claims under his second  
12 and third causes of action attempt to adjudicate rights that arise under federal law, this Court has  
13 federal question jurisdiction over these claims, which are inherently federal in nature. Plaintiff's  
14 fourth cause of action for failure to pay all wages for time spent in rest breaks separate from any  
15 piece-rate compensation is derivative of his rest break claim and is therefore also necessarily  
16 predicated on claims under the Federal Motor Carrier Safety Regulations and therefore preempted  
17 by 49 U.S.C. § 31141.

18 **V. SUPPLEMENTAL JURISDICTION UNDER 28 U.S.C. § 1367(a)**

19 25. Supplemental jurisdiction in federal question cases extends to claims that are  
20 sufficiently related to the federal claims to be part of the "same case or controversy." 28 U.S.C. §  
21 1367(a). As long as such relationship exists, the district court may adjudicate state law claims  
22 asserted by plaintiff without any other basis for federal jurisdiction. *See Danner v. Himmelfarb*  
23 (9th Cir. 1988) 858 F.2d 515, 522. In other words, so long as the Court deems that one of  
24 Plaintiff's causes of action presents a federal question, the Court shall have supplemental  
25 jurisdiction over the remaining causes of action "which arise out of the same core of operative  
26

27  
28 <sup>2</sup> The FMCSA has also since determined that California's meal and rest break rules are preempted  
under 49 U.S.C. § 31141 with respect to drivers of passenger-carrying commercial motor vehicles  
subject to FMCSA's HOS Regulations. 85 Fed. Reg. 3469 (Jan. 21, 2020).

1 facts that form the basis of the action over which the federal court already has jurisdiction." *Id.*;  
2 *see* 28 U.S.C. § 1367(a).

3       26. Here, all eleven of Plaintiff's causes of action are premised on the same nucleus of  
4 operative facts. That is, all of Plaintiff's causes of actions pertain and relate to the circumstances  
5 surrounding and arising out of Plaintiff's contracted driving services for SME. Accordingly, the  
6 District Court has the power to exercise supplemental jurisdiction. *See Kohler v. Inter-Tel*  
7 *Technologies* (9th. Cir. 2001) 244 F.3d 1167, 1170.

8       **VI. CONCLUSION**

9       WHEREFORE, Plaintiff's FAC is removable to this Court pursuant to 28 U.S.C. § 1331  
10 and Defendant Scanlon hereby, jointly and with the consent of Defendant SME, removes this  
11 action from the Superior Court of the State of California, County of Sacramento, to the United  
12 States District Court for the Eastern District of California and respectfully request this Court to  
13 proceed with this matter as if it had been originally filed herein.

14  
15  
16  
17 DATED: October 6, 2020

JEFFER MANGELS BUTLER & MITCHELL LLP  
R. SCOTT BRINK  
JAMES NEUDECKER  
TAYLOR N. BURRAS

18  
19  
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21 By: \_\_\_\_\_

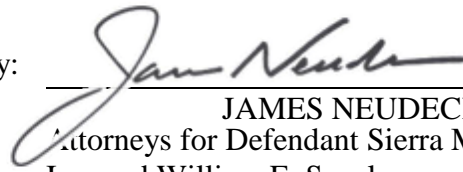
  
JAMES NEUDECKER  
Attorneys for Defendant Sierra Mountain Express,  
Inc. and William E. Scanlon

EXHIBIT  
"A"



SUM-100

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

SIERRA MOUNTAIN EXPRESS, INC., a limited liability company,  
and DOES 1 through 10, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

SIGIFREDO PEREZ JR., individually and on behalf of all others  
similarly situated and on behalf of the general public,

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED/ENDORSED**

**MAY 21 2020**

By: R. Gomez  
Deputy Clerk

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Superior Court for the State of California, County of Sacramento  
720 Ninth Street, Sacramento, CA 95814

CASE NUMBER:  
(Número del Caso):

**34-2020-00279284**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jessica L. Campbell, AEGIS LAW FIRM, PC, 9811 Irvine Ctr Drive, #100, Irvine, CA 92618, 949-379-6250

DATE:  
(Fecha) **MAY 21 2020**

Clerk, by R. GOMEZ, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): SIERRA MOUNTAIN EXPRESS, INC., a limited liability company  
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☒ other (specify): LLC
4. ☐ by personal delivery on (date):

BY FAX

**AEGIS LAW FIRM, PC**

Samuel A. Wong (State Bar No. 217104)  
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Email: Jcampbell@aegislawfirm.com

Attorneys for Plaintiff Sigifredo Perez Jr. individually,  
and on behalf of others similarly situated

**FILED/ENDORSED**

**MAY 21 2020**

By: R. Gomez  
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO**

SIGIFREDO PEREZ JR., individually and  
on behalf of all others similarly situated  
and on behalf of the general public,

Plaintiff,

v.

SIERRA MOUNTAIN EXPRESS, INC., a  
limited liability company, and DOES 1  
through 10, inclusive,

Defendants.

Case No. **34-2020-00279284**

**CLASS ACTION COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Paid Rest Breaks;
5. Failure to Pay All Wages to Piece-Rate Workers for Time Spent in Rest Breaks
6. Failure to Pay Wages Upon Separation of Employment
7. Failure to Pay Wages Within the Required Time;
8. Failure to Provide Accurate Itemized Wage Statements;
9. Failure to Reimburse Necessary Business Expenses;
10. Failure to Refrain From Unlawful Deductions;
11. Violation of California Business; and Professions Code §§ 17200, *et seq.*

**DEMAND FOR JURY TRIAL**

BY FAX

1 Plaintiff Sigifredo Perez Jr., individually and on behalf of all others similarly situated, allege  
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Sigifredo Perez Jr. ("Plaintiff") brings this putative class action against Sierra  
5 Mountain Express, Inc. and Does 1 through 10, inclusive (collectively "Defendants") on behalf of  
6 himself individually and on behalf of a class of Defendants' non-exempt employees who were  
7 misclassified as independent contractors.

8 2. Defendants are in the business of providing transportation of cars throughout  
9 California.

10 3. Through this action, Plaintiff is alleging that Defendants have engaged in a systematic  
11 pattern of wage and hour violations under the California Labor Code ("Labor Code"), all of which  
12 contribute to Defendants' deliberate unfair competition.

13 4. Plaintiff is informed and believes, and thereon alleges, during the relevant time  
14 period, Defendants had a consistent policy of violating state wage and hour laws by, among other  
15 things:

- 16 (a) Misclassifying Plaintiff and drivers as independent contractors;
- 17 (b) Failing to pay all wages for all hours worked, including minimum and  
18 overtime wages;
- 19 (c) Failing to authorize or permit rest breaks or provide compensation in lieu  
20 thereof;
- 21 (d) Failing to provide meal periods or compensation in lieu thereof;
- 22 (e) Failing to pay wages to piece-rate workers for time spent in rest breaks and/or  
23 recovery periods;
- 24 (f) Willfully failing to provide accurate semi-monthly itemized wage statements;
- 25 (g) Failing to pay all wages due upon separation of employment;
- 26 (h) Failing to reimburse all business expenses incurred by class members in direct  
27 consequence of the discharge of his or her duties; and  
28

1 (i) Unlawfully deducting items from class members' pay or requiring forced  
2 patronage.

3 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of  
4 himself and all others similarly to recover, among other things, unpaid wages and benefits, interest,  
5 attorney's fees, costs and expenses and penalties pursuant to Labor Code §§ 201-204, 210, 221, 226,  
6 226.2, 226.7, 450, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, 2750.3, 2800, and 2802.

7 6. Plaintiff, on behalf of himself and all class members, pursuant to Business and  
8 Professions Code sections 17200, *et seq*, also seek injunctive relief and restitution for the unfair,  
9 unlawful, or fraudulent practices alleged in this Complaint

10 **JURISDICTION AND VENUE**

11 7. The monetary damages and restitution sought by Plaintiff exceeds the minimal  
12 jurisdictional limits of the Superior Court and will be established according to proof at trial.

13 8. This Court has jurisdiction over this action pursuant to the California Constitution,  
14 Article VI, § 10, which grants the Superior Court original jurisdiction in all cases except those given  
15 by statutes to other courts. The statutes under which this action is brought do not specify any other  
16 basis for jurisdiction.

17 9. This Court has jurisdiction over all Defendants because, upon information and belief,  
18 Defendants have sufficient minimum contacts in California or otherwise intentionally avail  
19 themselves of the California market so as to render the exercise of jurisdiction over them by the  
20 California courts consistent with traditional notions of fair play and substantial justice.

21 10. Venue is proper in this Court because, upon information and belief, Defendants  
22 transact business or have at least one facility in this county, or acts and omissions alleged herein took  
23 place in this county.

24 **THE PARTIES**

25 11. Plaintiff Sigifredo Perez Jr. is a citizen of California. Plaintiff was employed by  
26 Defendants during the Class Period in California.

27 12. Defendants were and are, upon information and belief, a corporation doing business  
28 throughout the State of California, and at all times hereinafter mentioned, an employer as defined in

1 and subject to the California Labor Code and Industrial Welfare Commission ("IWC") Wage Orders,  
2 whose employees are and were engaged throughout this county and the State of California.

3 13. The true names and capacities, whether individual, corporate, associate, or otherwise,  
4 of the Defendants sued herein as Does 1 to 10, inclusive, are currently unknown to Plaintiff, who  
5 therefore sues said Defendants by such fictitious names under California Code of Civil Procedure  
6 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants  
7 designated herein as a Doe is legally responsible in some manner for the unlawful acts referred to  
8 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and  
9 capacities of the Defendants designated hereinafter as DOES when such identities become known.

10 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant  
11 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
12 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants are  
13 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the  
14 employers and/or joint employers of Plaintiff and the class members.

15 **CLASS ACTION ALLEGATIONS**

16 15. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of himself  
17 and all other members of the general public similarly situated who were affected by Defendants'  
18 Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

19 16. All claims alleged herein arise under California law for which Plaintiff seeks relief  
20 authorized by California law.

21 17. Plaintiff's proposed Class consists of and is defined as follows:

22 **Class**

23 All California citizens who performed work for Defendants in the State of  
24 California as drivers, who were misclassified as independent contractors  
25 from April 6, 2016<sup>1</sup> to the date of class certification.  
26

27 \_\_\_\_\_  
28 <sup>1</sup> The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I,  
Emergency Rule No. 9.

18. Plaintiff also seeks to certify the following Subclass:

Waiting Time Subclass

All members of the Class who separated their working relationship from Defendants from April 6, 2017 to the date the Subclass is certified.

19. Members of the Class and Subclass described above will collectively be referred to as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or modify any Class or Subclass definition, as appropriate based on investigation, discovery and specific theories of liability.

20. This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure § 382 because there are common questions of law and fact as to the Class that predominate over questions affecting only individual members including, but not limited to:

- a. Whether Defendants misclassified Plaintiff and class members as independent contractors rather than non-exempt employees;
- b. Whether Defendants failed to pay at least minimum wage for all hours worked by Plaintiff and class members;
- c. Whether Defendants failed to pay overtime wages earned by Plaintiff and class members;
- d. Whether Defendants failed to provide Plaintiff and class members with meal periods;
- e. Whether Defendants deprived Plaintiff and class members of paid rest breaks or required Plaintiff and class members to work through rest breaks without compensation;
- f. Whether Defendants failed to pay all wages to Plaintiff and class members for time spent in rest breaks;
- g. Whether Defendants failed to timely pay Plaintiff and class members all earned wages during their employment;



- h. Whether Defendants failed to timely pay Plaintiff and former class members all wages due upon termination or within 72 hours of resignation;
- i. Whether Defendants failed to furnish Plaintiff and class members with accurate itemized wage statements;
- j. Whether Defendants required Plaintiff and class members to use their personal funds for business expenses and then failed to adequately reimburse them;
- k. Whether Defendants made unlawful deductions from Plaintiff's and class members' pay;
- l. Whether Defendants' conduct was willful or reckless; and
- m. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

21. There is a well-defined community of interest in the litigation and the Class is readily ascertainable.

- (a) Numerosity: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than 100 individuals. The identity of the class members are readily ascertainable by inspection of Defendants' employment and payroll records.
- (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiff is also typical of the injuries sustained by the Class because they arise out of and are caused by Defendants' common course of conduct as alleged herein.
- (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent and protect the interests of all members of the Class because it is in their best interest to prosecute the claims alleged herein to obtain full compensation and

penalties due him and the Class. Plaintiff's attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and are versed in the rules governing class action discovery, certification and settlement. Plaintiff has incurred and, throughout the duration of this action, will continue to incur attorneys' fees and costs that have been and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for each Class. If appropriate this Court can, and is empowered to, fashion methods to efficiently manage this case as a class and/or collective action.

(e) Public Policy Considerations: Employers in the State of California and other states violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as affording them privacy protections.

#### GENERAL ALLEGATIONS

22. Plaintiff performed services for Defendants in California during the relevant time period. During the relevant time period, Plaintiff was classified by Defendants as an independent contractor.



1           23. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned  
2 herein, Defendants were advised by skilled lawyers, employees and other professionals who were  
3 knowledgeable about California wage and hour law, employment and personnel practices and the  
4 requirements of California.

5           24. Through this action, Plaintiff alleges that Defendants have engaged in a systematic  
6 pattern of wage and hour violations under the California Labor Code and IWC Wage Orders, all of  
7 which contribute to Defendants' deliberate unfair competition.

8           25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
9 should have known that Plaintiff and class members were entitled to receive wages for all time  
10 worked (including minimum and overtime wages) and that they were not receiving all wages earned  
11 for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders,  
12 Plaintiff and class members were not paid wages (including minimum and overtime wages) for all  
13 hours worked when Defendants failed to pay or underpaid Plaintiff and class members for all hours  
14 worked, and failed to pay for time spent in rest breaks, among other things.

15           26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
16 should have known that Plaintiff and class members were entitled to receive all rest breaks or  
17 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when a  
18 rest break was missed, and were entitled to payment of wages for time spent when rest breaks were  
19 taken. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members did not  
20 receive paid rest breaks or payment of one (1) additional hour of pay at Plaintiff and class members'  
21 regular rate of pay when a rest break was missed.

22           27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
23 should have known that Plaintiff and class members were entitled to receive all meal periods or  
24 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when  
25 they did not receive a timely, uninterrupted meal period. In violation of the Labor Code and IWC  
26 Wage Orders, Plaintiff and class members did not receive all meal periods or payment of one (1)  
27 additional hour of pay at Plaintiff's and class members' regular rate of pay when they did not receive  
28 a timely, uninterrupted meal period.

1           28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
2 should have known they had a duty to separately compensate Plaintiff and class members who were  
3 piece-rate workers for time spent during rest breaks, when rest breaks were taken. In violation of the  
4 Labor Code, Defendants did not pay piece-rate workers for time spent during rest breaks, when rest  
5 breaks were taken.

6           29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
7 should have known that Plaintiff and class members were entitled to timely payment of wages during  
8 their employment. In violation of the California Labor Code, Plaintiff and class members did not  
9 receive payment of all wages within permissible time periods.

10          30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
11 should have known that Plaintiff and Waiting Time class members were entitled to timely payment  
12 of wages upon separation of employment. In violation of the California Labor Code, Plaintiff and  
13 Waiting Time class members did not receive payment of all wages including, but not limited to,  
14 unpaid wages within permissible time periods.

15          31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
16 should have known that Plaintiff and class members were entitled to receive complete and accurate  
17 wage statements in accordance with California law. In violation of the California Labor Code,  
18 Plaintiff and class members were not furnished with complete and accurate wage statements showing  
19 their total hours worked, number of hours or pieces worked at each hourly or piece rate, and gross  
20 and net wages, among other things.

21          32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
22 should have known that Plaintiff and class members were entitled to reimbursement for necessary  
23 expenditures incurred in connection with the performance and execution of their job duties. In  
24 violation of the California Labor Code, Plaintiff and class members did not receive adequate  
25 reimbursement for necessary business expenses.

26          33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
27 should have known that Plaintiff and class members were entitled to pay without unlawful deductions  
28

1 or forced patronage. In violation of the California Labor Code, Plaintiff and class members did not  
2 their wages free of unlawful deductions.

3 34. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned  
4 herein, Defendants knew or should have known that it had a duty to compensate Plaintiff and class  
5 members, and that Defendants had the financial ability to pay such compensation but willfully,  
6 knowingly and intentionally failed to do so, all in order to increase Defendants' profits.

7 35. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief against  
8 Defendants on behalf of himself and all class members to recover, among other things, unpaid wages,  
9 interest, attorneys' fees, penalties, reimbursements, costs and expenses.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY MINIMUM WAGES**

12 **(Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197; Violation of IWC Wage Order)**

13 36. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
14 though fully set forth herein.

15 37. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees fixed  
16 by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than  
17 the minimum so fixed is unlawful.

18 38. During the relevant time period, failed to pay Plaintiff and class members all  
19 minimum wages owed when Defendants did not pay for all hours worked, and did not pay for time  
20 spent in rest breaks, among other reasons. Plaintiff and class members were not being paid at least  
21 minimum wage for their work.

22 39. During the relevant time period, Defendants regularly failed to pay at least minimum  
23 wage to Plaintiff and class members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

24 40. Defendants' failure to pay Plaintiff and class members the minimum wage as required  
25 violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and class members are  
26 entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs  
27 and attorney's fees.

1           41. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to recover  
2 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

3                           **SECOND CAUSE OF ACTION**

4                           **FAILURE TO PAY OVERTIME**

5                   **(Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order)**

6           42. Plaintiff hereby re-allege and incorporate by reference all paragraphs above as  
7 though fully set forth herein.

8           43. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful  
9 to employ persons without compensating them at a rate of pay either one and one-half (1½) or  
10 two (2) times the person's regular rate of pay, depending on the number of hours or days worked  
11 by the person on a daily or weekly basis.

12           44. Specifically, the applicable IWC Wage Orders provide that Defendants are and  
13 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one and  
14 one-half times (1½) their regular rate of pay when working and for all hours worked in excess of  
15 eight (8) hours in a day or more than forty (40) hours in a workweek and for the first eight (8)  
16 hours of work on the seventh day of work in a workweek.

17           45. The applicable IWC Wage Orders further provide that Defendants are and were  
18 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times their  
19 regular rate of pay when working and for all hours worked in excess of twelve (12) hours in a day  
20 or in excess of eight (8) hours on the seventh day of work in a workweek.

21           46. California Labor Code § 510 codifies the right to overtime compensation at one and  
22 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day  
23 or forty (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive  
24 day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess  
25 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work in  
26 a workweek.

1           47. Labor Code § 510 and the applicable IWC Wage Orders provide that employment  
2 of more than six days in a workweek is only permissible if the employer pays proper overtime  
3 compensation as set forth herein.

4           48. Plaintiff and Class Members were non-exempt employees entitled to the protections  
5 of California Labor Code §§ 510 and 1194.

6           49. During the relevant time period, Defendants failed to pay Plaintiff and Class  
7 Members overtime wages for all overtime hours worked when Plaintiff and Class Members  
8 worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh  
9 consecutive day of work in a workweek, or when Plaintiff and Class Members worked in excess  
10 of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a  
11 work week.

12           50. In violation of state law, Defendants knowingly and willfully refused to perform  
13 their obligations and compensate Plaintiff and Class Members for all wages earned and all hours  
14 worked.

15           51. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of  
16 overtime and double time compensation, as required by California law, violates the provisions of  
17 Labor Code §§ 510 and 1198, and is therefore unlawful.

18           52. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover  
19 their unpaid overtime and double time compensation as well as interest, costs, and attorneys' fees

20                           **THIRD CAUSE OF ACTION**

21                           **FAILURE TO PROVIDE MEAL PERIODS**

22                   **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

23           53. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
24 though fully set forth herein

25           54. Labor Code § 226.7 provides that no employer shall require an employee to work  
26 during any meal period mandated by the IWC Wage Orders.

27           55. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall employ  
28 any person for a work period of more than five (5) hours without a meal period of not less than 30

1 minutes, except that when a work period of not more than six (6) hours will complete the day's  
2 work the meal period may be waived by mutual consent of the employer and the employee."

3 56. Labor Code § 512(a) provides that an employer may not require, cause, or permit  
4 an employee to work for a period of more than five (5) hours per day without providing the  
5 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the  
6 total work period per day of the employee is not more than six (6) hours, the meal period may be  
7 waived by mutual consent of both the employer and the employee.

8 57. Labor Code § 512(a) also provides that an employer may not employ an employee  
9 for a work period of more than ten (10) hours per day without providing the employee with a second  
10 meal period of not less than thirty (30) minutes, except that if the total hours worked is no more  
11 than twelve (12) hours, the second meal period may be waived by mutual consent of the employer  
12 and the employee only if the first meal period was not waived.

13 58. During the relevant time period, Plaintiff and Class Members did not receive  
14 compliant meal periods for working more than five (5) and/or ten (10) hours per day because their  
15 meal periods were missed, late, short, interrupted, and/or they were not permitted to take a second  
16 meal period.

17 59. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order requires  
18 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of  
19 compensation for each work day that a compliant meal period is not provided.

20 60. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal  
21 period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code §  
22 226.7(b) and section 11 of the applicable IWC Wage Order.

23 As a result of Defendants' failure to pay Plaintiff and Class Members an additional hour of pay for  
24 each day a compliant meal period was not provided, Plaintiff and Class Members suffered and  
25 continue to suffer a loss of wages and compensation

26 **FOURTH CAUSE OF ACTION**

27 **FAILURE TO PERMIT REST BREAKS**

28 **(Violation of Labor Code § 226.7; Violation of IWC Wage Order)**

1           61. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
2 though fully set forth herein.

3           62. Labor Code § 226.7(a) provides that no employer shall require an employee to work  
4 during any rest period mandated by the IWC Wage Orders.

5           63. Section 12 of the applicable IWC Wage Order states “every employer shall authorize  
6 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of  
7 each work period” and the “authorized rest period time shall be based on the total hours worked daily  
8 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the  
9 total daily work time is less than three and one-half (3½) hours.

10           64. Labor Code 226.7(d) provides that a rest period mandated by state law or IWC Wage  
11 Order “shall be counted as hours worked, for which there shall be no deduction from wages.”

12           65. During the relevant time period, Plaintiff and class members did not receive a ten (10)  
13 minute net rest period for every four (4) hours or major fraction thereof worked because they were  
14 required to work through their daily rest periods and/or were not authorized to take their rest periods.

15           66. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an  
16 employer to pay an employee one additional hour of pay at the employee’s regular rate of  
17 compensation for each work day that the rest period is not provided.

18           67. At all relevant times, Defendants failed to pay Plaintiff and class members the full  
19 rest period premium for missed or interrupted rest periods pursuant to Labor Code § 226.7(b) and  
20 section 12 of the applicable IWC Wage Order.

21           68. As a result of Defendants’ failure to pay Plaintiff and class members an additional  
22 hour of pay for each day a rest period was not provided, Plaintiff and class members suffered and  
23 continue to suffer a loss of wages and compensation.

24                           **FIFTH CAUSE OF ACTION**

25                   **FAILURE TO PAY ALL WAGES TO PIECE-RATE WORKERS FOR REST BREAKS**

26                           **(Violation of Labor Code § 226.2; Violation of IWC Wage Order)**

27           69. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as  
28 though fully set forth herein.



1           70. Labor Code § 226.2 requires employees who are paid on a piece-rate basis to be  
2 compensated for rest and recovery periods and other nonproductive time separate from any piece-  
3 rate compensation.

4           71. Labor Code § 226.2(a) provides that employees compensated on a piece-rate basis  
5 shall be compensated for rest and recovery periods, and other nonproductive time separate from any  
6 piece-rate compensation. Employees shall be compensated at a regular hourly rate that is no less than  
7 the higher of (a) An average hourly rate determined by dividing the total compensation for the  
8 workweek, exclusive of compensation for rest and recovery periods and any premium compensation  
9 for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.  
10 (b) The applicable minimum wage.

11           72. During the relevant time period, Plaintiff and Class Members paid on a piece-rate  
12 basis were not compensated for rest and recovery periods and other nonproductive time separate  
13 from any piece-rate compensation.

14           73. At all relevant times, Defendants knowingly and intentionally failed to comply with  
15 Labor Code § 226.2 denying compensated rest and recovery periods to employees paid on a piece-  
16 rate basis.

17           74. As a result of Defendants' failure to pay Plaintiff and Class Members compensated  
18 rest and recovery periods, Plaintiff and Class Members suffered and continue to suffer a loss of wages  
19 and compensation.

20                                   **SIXTH CAUSE OF ACTION**

21                                   **FAILURE TO PAY WAGES UPON SEPARATION**

22                                   **OF EMPLOYMENT AND WITHIN THE REQUIRED TIME**

23                                   **(Violations of Labor Code §§ 201, 202, 203; Violation of IWC Wage Order)**

24           75. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as  
25 though fully set forth herein.

26           76. California Labor Code §§ 201 and 202 provide that if an employer discharges an  
27 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,  
28 and that if an employee voluntarily leaves his or her employment, his or her wages shall become due



1 and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-  
2 two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled  
3 to his or her wages at the time of quitting.

4 77. During the relevant time period, Defendants willfully failed to pay Plaintiff and  
5 Waiting Time Subclass Members all their earned wages upon termination including, but not limited  
6 to, minimum wages, either at the time of discharge or within seventy-two (72) hours of their leaving  
7 Defendants' employ.

8 78. Defendants' failure to pay Plaintiff and Waiting Time Subclass Members all their  
9 earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants'  
10 employ, is in violation of California Labor Code §§ 201 and 202.

11 79. California Labor Code § 203 provides that if an employer willfully fails to pay wages  
12 owed promptly upon discharge or resignation as required under California Labor Code §§ 201 and  
13 202, then the wages of the employee shall continue as a penalty from the due date, and at the same  
14 rate until paid or until an action is commenced; but the wages shall not continue for more than thirty  
15 (30) days.

16 80. Defendants willfully failed to pay Plaintiff and Waiting Time Subclass Members all  
17 wages due and, as a result, owe Plaintiff and Waiting Time Subclass Members regular daily wages  
18 for each day they were not paid, at their regular rates of pay up to a thirty (30) day maximum pursuant  
19 to California Labor Code § 203 all in an amount to be shown according to proof at trial.

20 81. Based on these violations, Plaintiff and the Waiting Time Subclass they seek to  
21 represent request relief as described herein and below.

22 **SEVENTH CAUSE OF ACTION**

23 **FAILURE TO TIMELY PAY WAGES**

24 **(Violation of Labor Code §§ 204, 210; Violation of IWC Wage Order)**

25 82. Plaintiff hereby re-allege and incorporate by reference the previous paragraphs, as  
26 though fully set forth herein.

27 83. Labor Code § 204 provides, in pertinent part, "Labor performed between the 1st and  
28 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of

1 the month during which the labor was performed, and labor performed between the 16th and the last  
2 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following  
3 month.”

4 84. Defendants failed to timely pay Plaintiff and class members all of their earned wages  
5 as required by Labor Code Section 204.

6 85. Plaintiff and class members have been deprived of their rightfully earned wages as a  
7 direct and proximate result of Defendants’ failure to pay said compensation. Plaintiff and class  
8 members are entitled to recover such amounts, plus interest thereon, attorney’s fees and costs.

9 86. In addition, Plaintiff and class members are entitled to penalties pursuant to Labor  
10 Code § 210 as follows: (1) for Defendants’ initial violation, \$100 for each failure to pay each Class  
11 Member; and (2) for each of Defendants’ subsequent violations, or any willful or intentional  
12 violation, \$200 for each failure to pay each Class Member, plus 25 percent of the amount unlawfully  
13 held.

14 **EIGHTH CAUSE OF ACTION**

15 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

16 **(Violation of Labor Code § 226; Violation of IWC Wage Order)**

17 87. Plaintiff hereby re-allege and incorporate by reference the previous paragraphs, as  
18 though fully set forth herein.

19 88. California Labor Code § 226(a) requires employers to furnish their employees with  
20 an accurate itemized writing that shows gross wages earned, total hours worked, all deductions, net  
21 wages earned, the inclusive dates of the period for which the employee is paid, the name of the  
22 employee and the portion of his or her social security number as required by law, the name and  
23 address of the legal entity that is the employer and all applicable hourly rates in effect during the pay  
24 period and the corresponding number of hours worked at each hourly rate by the employee.

25 89. In addition, pursuant to Labor Code § 226.2(a)(2), the itemized statements of  
26 employees paid on a piece-rate basis shall also state (1) the total hours of compensable rest and  
27 recovery periods, the rate of compensation, and the gross wages paid for those periods during the  
28

1 pay period; and (2) the total hours of other nonproductive time, the rate of compensation, and the  
2 gross wages paid for that time during the pay period.

3 90. Defendants have intentionally and willfully failed to provide Plaintiff and class  
4 members with complete and accurate wage statements. The deficiencies include, among other things,  
5 the failure to list the gross wages earned, net wages earned, hours worked, and all applicable hourly  
6 rates in effect during the pay period.

7 91. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and  
8 class members have suffered injury and damage to their statutorily protected rights. Specifically,  
9 Plaintiff and class members have been injured by Defendants' intentional violation of California  
10 Labor Code § 226(a) because they were denied both their legal right to receive, and their protected  
11 interest in receiving, accurate itemized wage statements under California Labor Code § 226(a). In  
12 addition, because Defendants failed to provide the accurate rates of pay on wage statements,  
13 Defendants have prevented Plaintiff and class members from determining if all hours worked were  
14 paid at the appropriate rate and the extent of the underpayment. Plaintiff has had to file this lawsuit  
15 in order to analyze whether in fact Plaintiff was paid correctly and the extent of the underpayment,  
16 thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in  
17 these efforts and incur these costs had Defendants provided the accurate rate of pay. This has also  
18 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

19 92. California Labor Code § 226(a) requires an employer to pay the greater of all actual  
20 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one  
21 hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's  
22 fees and costs, to each employee who was injured by the employer's failure to comply with California  
23 Labor Code § 226(a).

24 93. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and  
25 class members from knowing, understanding and disputing the wages paid to them, and resulted in  
26 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and  
27 intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members have  
28

1 suffered an injury, the exact amount of damages and/or penalties is all in an amount to be shown  
2 according to proof at trial.

3 94. Plaintiff and class members are also entitled to injunctive relief under California  
4 Labor Code § 226(g), compelling Defendants to comply with California Labor Code § 226, and seek  
5 the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

6 **NINTH CAUSE OF ACTION**

7 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**

8 **(Violation of Labor Code §§ 2800, 2802; Violation of IWC Wage Order)**

9 95. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
10 though fully set forth herein.

11 96. Labor Code § 2800 states that an employer shall in all cases indemnify its employee  
12 for losses.

13 97. Labor Code § 2802 requires employers to indemnify their employees for all  
14 necessary expenditures or losses incurred by employees in direct consequence of the discharge of  
15 their duties.

16 98. Section 9 of the applicable IWC Wage Order states that when tools or equipment  
17 are required by the employer or are necessary to the performance of a job, such tools and equipment  
18 shall be provided and maintained by the employer.

19 99. During the relevant time period, Defendants required Plaintiff and class members to  
20 download an app onto their personal cellular devices in order to view, accept and process jobs,  
21 without paying Plaintiff and class members for a reasonable percentage of their cell phone bills.

22 100. During the relevant time period, Defendants required Plaintiff and class members to  
23 buy supplies or pay for other business expenses, without properly compensating them.

24 101. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify  
25 Plaintiff and class members for these expenses.

26 102. In committing the violations as herein alleged, Defendants have intentionally and  
27 willfully failed to fully reimburse Plaintiff and class members for necessary business-related costs  
28 and expenses. As a direct result, Plaintiff and class members have suffered and continue to suffer

1 substantial losses relating to the use and enjoyment of such compensation, wages, expenses, and  
2 attorney's fees.

3 **TENTH CAUSE OF ACTION**

4 **FAILURE TO REFRAIN FROM UNLAWFUL DEDUCTIONS**

5 **(Violation of Labor Code §§ 221, 450; Violation of IWC Wage Order)**

6 103. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
7 though fully set forth herein.

8 104. Labor Code § 221 provides, in pertinent part, "[i]t shall be unlawful for any employer  
9 to collect or receive from an employee any part of wages theretofore paid by said employer to said  
10 employee."

11 105. Labor Code § 450 provides, in pertinent part, "No employer, or agent or officer  
12 thereof, or other person, may compel or coerce any employee, or applicant for employment, to  
13 patronize his or her employer, or any other person, in the purchase of any thing of value."

14 106. During the relevant time period, Defendants made unlawful deductions from  
15 Plaintiff's and class members' wages and required forced patronage.

16 107. Defendants' violation of Labor Code §§ 221 and 450 caused Plaintiffs and class  
17 members to suffer substantial monetary losses, and expenses and attorney's fees in seeking to  
18 compel Defendants to fully perform their obligations under California law, as a result Plaintiff and  
19 class members suffered and continue to suffer a loss of wages and compensation.

20 **ELEVENTH CAUSE OF ACTION**

21 **UNFAIR BUSINESS PRACTICES**

22 **(Violation of Business and Professions Code §§ 17200 *et seq.*)**

23 108. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as  
24 though fully set forth herein.

25 109. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair  
26 competition, which includes any "unlawful, unfair or fraudulent business act or practice . . . ."

27 110. A violation of California Business and Professions Code §§ 17200, *et seq.* may be  
28 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and

1 practices have violated state law causing Plaintiff and class members to suffer and continue to suffer  
2 injuries in fact. As alleged herein, Defendants systematically engaged in unlawful conduct in  
3 violation of the California Labor Code and IWC Wage Orders, such as failing to pay minimum  
4 wages, failing to authorize or permit paid rest breaks, failing to provide meal periods, failing to pay  
5 wages for time spent in rest breaks and/or recovery periods, failing to pay all wages due and owing  
6 upon separation of employment and in a timely manner, failing to timely pay wages during  
7 employment, failing to furnish accurate wage statements, failing to reimburse business expenses, and  
8 failing to refrain from unlawful deductions, all in order to decrease their costs of doing business and  
9 increase their profits.

10 111. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and  
11 class members wages and monies, thereby creating for Defendants an artificially lower cost of doing  
12 business in order to undercut their competitors and establish and/or gain a greater foothold in the  
13 marketplace.

14 112. At the time Plaintiff and class members were hired, Defendants knowingly,  
15 intentionally and wrongfully misrepresented to each of them their conformance with the California  
16 Labor Code and IWC Wage Orders including proper payments required by law.

17 113. At all relevant times herein, Defendants held themselves out to Plaintiff and class  
18 members as being knowledgeable concerning the labor laws of California.

19 114. At all times relevant herein, Plaintiff and class members relied on and believed  
20 Defendants' representations concerning their conformance with California's wage and hour laws all  
21 to their detriment.

22 115. As a result of Defendants' intentional, willful, purposeful and wrongful  
23 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,  
24 Plaintiff and class members suffered a loss of wages and monies, all in an amount to be shown  
25 according to proof at trial. By violating the foregoing statutes and regulations as herein alleged,  
26 Defendants' acts constitute unfair and unlawful business practices under California Business and  
27 Professions Code §§ 17200, *et seq.*  
28

116. Defendants' violations of the California Labor Code and IWC Wage Orders and their scheme to lower their payroll costs as alleged herein, constitute unlawful business practices because they were done in a systematic manner over a period of time to the detriment of Plaintiff and class members.

117. As a result of the unfair business practices of Defendants, as alleged herein, Plaintiff and class members are entitled to injunctive relief, disgorgement and restitution in an amount to be shown according to proof at trial.

118. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members and to the general public. Based on Defendants' conduct as alleged herein, Plaintiff and class members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of all others similarly situated, pray for judgment against Defendants as follows:

1. For certification of the proposed Class and Waiting Time Subclass and any other appropriate subclasses under California Code of Civil Procedure § 382;
2. For appointment of Sigifredo Perez Jr. as the class representative;
3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;
4. For general damages;
5. For special damages;
6. For liquidated damages pursuant to California Labor Code § 1194.2;
7. For statutory penalties to the extent permitted by law, including those pursuant to the California Labor Code and IWC Wage Orders;
8. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
9. For restitution as provided by California Business and Professions Code §§ 17200, *et seq.*;



1           10. For an order requiring Defendants to restore and disgorge all funds to each employee  
2 acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent  
3 and, therefore, constituting unfair competition under California Business and Professions Code §§  
4 17200, *et seq.*;

5           11. For an award of damages in the amount of unpaid compensation including, but not  
6 limited to, unpaid wages, benefits and penalties according to proof, including interest thereon;

7           12. For pre-judgment interest;

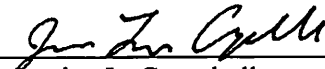
8           13. For reasonable attorney's fees and costs of suit to the extent permitted by law,  
9 including pursuant to California Code of Civil Procedure § 1021.5 and California Labor Code  
10 §§ 226(e), 1194 and 2802(c); and

11           14. For such other relief as the Court deems just and proper.

12  
13 Dated: May 21, 2020

AEGIS LAW FIRM, PC

14  
15 By: \_\_\_\_\_

  
16 Jessica L. Campbell  
17 Attorneys for Plaintiff

18  
19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

21 Dated: May 21, 2020

AEGIS LAW FIRM, PC

22  
23 By: \_\_\_\_\_


  
24 Jessica L. Campbell  
25 Attorneys for Plaintiff  
26  
27  
28



EXHIBIT  
"B"

**AEGIS LAW FIRM, PC**

Samuel A. Wong (State Bar No. 217104)  
Kashif Haque (State Bar No. 218672)  
Jessica L. Campbell (State Bar No. 280626)  
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Attorneys for Plaintiff Sigifredo Perez Jr. individually,  
and on behalf of others similarly situated

(Additional counsel listed on the following page)

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO**

SIGIFREDO PEREZ JR., individually and  
on behalf of all others similarly situated  
and on behalf of the general public,

Plaintiff,

v.

SIERRA MOUNTAIN EXPRESS, INC., a  
limited liability company, WILLIAM E.  
SCANLON, and DOES 1 through 10,  
inclusive,

Defendants.

Case No. 34-2020-00279284-CU-OE-GDS

*Assigned for All Purposes to the:  
Honorable Richard K. Sueyoshi  
Department 40*

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Provide Meal Periods;
3. Failure to Permit Paid Rest Breaks;
4. Failure to Pay All Wages to Piece-Rate Workers for Time Spent in Rest Breaks
5. Failure to Pay Wages Upon Separation of Employment
6. Failure to Pay Wages Within the Required Time;
7. Failure to Provide Accurate Itemized Wage Statements;
8. Failure to Reimburse Necessary Business Expenses;
9. Failure to Refrain From Unlawful Deductions;
10. Violation of California Business; and Professions Code §§ 17200, *et seq.*
11. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

**LAW OFFICE OF NEDA AGUIRRE, APC**

Neda Aguirre, State Bar No. 303790

41593 Winchester Road, Suite 102

Temecula, CA 92590

Tel. 951-775-8445

Fax. 951-346-3876|

Attorneys for Plaintiff Sigifredo Perez Jr., individually,  
and on behalf of others similarly situated

1 Plaintiff Sigifredo Perez Jr., individually and on behalf of all others similarly situated, allege  
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Sigifredo Perez Jr. ("Plaintiff") brings this putative class putative class and  
5 representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698  
6 *et seq.*, against Sierra Mountain Express, Inc., William E. Scanlon, and Does 1 through 10, inclusive  
7 (collectively "Defendants") on behalf of himself individually and on behalf of Defendants' non-  
8 exempt employees who were misclassified as independent contractors.

9 2. Defendants are in the business of providing transportation of cars throughout  
10 California.

11 3. Through this action, Plaintiff is alleging that Defendants have engaged in a systematic  
12 pattern of wage and hour violations under the California Labor Code ("Labor Code"), all of which  
13 contribute to Defendants' deliberate unfair competition.

14 4. Plaintiff is informed and believes, and thereon alleges, during the relevant time  
15 period, Defendants had a consistent policy of violating state wage and hour laws by, among other  
16 things:

- 17 (a) Misclassifying Plaintiff and drivers as independent contractors;
- 18 (b) Failing to pay all wages for all hours worked;
- 19 (c) Failing to authorize or permit rest breaks or provide compensation in lieu  
20 thereof;
- 21 (d) Failing to provide meal periods or compensation in lieu thereof;
- 22 (e) Failing to pay wages to piece-rate workers for time spent in rest breaks and/or  
23 recovery periods;
- 24 (f) Willfully failing to provide accurate semi-monthly itemized wage statements;
- 25 (g) Failing to pay all wages due upon separation of employment;
- 26 (h) Failing to reimburse all business expenses incurred by class members in direct  
27 consequence of the discharge of his or her duties; and  
28

1 (i) Unlawfully deducting items from class members' pay or requiring forced  
2 patronage.

3 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of  
4 himself and all others similarly to recover, among other things, unpaid wages and benefits, interest,  
5 attorney's fees, costs and expenses and penalties pursuant to Labor Code §§ 201-204, 210, 221,  
6 225.5, 226, 226.2, 226.3, 226.7, 226.8, 450, 512, 558, 558.1, 1182.12, 1194, 1194.2, 1197, 1197.1,  
7 2750.3, 2800, 2802, and 2698, *et seq.*

8 6. Plaintiff, on behalf of himself and all class members, pursuant to Business and  
9 Professions Code sections 17200, *et seq.*, also seek injunctive relief and restitution for the unfair,  
10 unlawful, or fraudulent practices alleged in this Complaint

11 **JURISDICTION AND VENUE**

12 7. The monetary damages and restitution sought by Plaintiff exceeds the minimal  
13 jurisdictional limits of the Superior Court and will be established according to proof at trial.

14 8. This Court has jurisdiction over this action pursuant to the California Constitution,  
15 Article VI, § 10, which grants the Superior Court original jurisdiction in all cases except those given  
16 by statutes to other courts. The statutes under which this action is brought do not specify any other  
17 basis for jurisdiction.

18 9. This Court has jurisdiction over all Defendants because, upon information and belief,  
19 Defendants have sufficient minimum contacts in California or otherwise intentionally avail  
20 themselves of the California market so as to render the exercise of jurisdiction over them by the  
21 California courts consistent with traditional notions of fair play and substantial justice.

22 10. Venue is proper in this Court because, upon information and belief, Defendants  
23 transact business or have at least one facility in this county, or acts and omissions alleged herein took  
24 place in this county.

25 **THE PARTIES**

26 11. Plaintiff Sigifredo Perez Jr. is a citizen of California. Plaintiff was employed by  
27 Defendants during the Class Period in California.  
28

12. Defendants were and are, upon information and belief, a corporation doing business throughout the State of California, and at all times hereinafter mentioned, an employer as defined in and subject to the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, whose employees are and were engaged throughout this county and the State of California.

13. The true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants sued herein as Does 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues said Defendants by such fictitious names under California Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a Doe is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

14. Plaintiff is informed and believes, and based thereon alleges, that Defendant William E. Scanlon is the employer or other person acting on behalf of the employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates or causes to be violated, Sections 203, 226, 226.7, 1194, or 2801, may can be held liable as the employer for such violation pursuant to Labor Code § 558.1(a).

15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employers and/or joint employers of Plaintiff and the class members.

#### **CLASS ACTION ALLEGATIONS**

16. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of himself and all other members of the general public similarly situated who were affected by Defendants’ Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

17. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

18. Plaintiff's proposed Class consists of and is defined as follows:

Class

All California citizens who performed work for Defendants in the State of California as drivers, who were misclassified as independent contractors from April 6, 2016<sup>1</sup> to the date of class certification.

19. Plaintiff also seeks to certify the following Subclass:

Waiting Time Subclass

All members of the Class who separated their working relationship from Defendants from April 6, 2017 to the date the Subclass is certified.

20. Members of the Class and Subclass described above will collectively be referred to as "class members." Plaintiff reserves the right to establish other or additional subclasses, or modify any Class or Subclass definition, as appropriate based on investigation, discovery and specific theories of liability.

21. This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure § 382 because there are common questions of law and fact as to the Class that predominate over questions affecting only individual members including, but not limited to:

- a. Whether Defendants misclassified Plaintiff and class members as independent contractors rather than non-exempt employees;
- b. Whether Defendants failed to pay at least minimum wage for all hours worked by Plaintiff and class members;
- c. Whether Defendants failed to provide Plaintiff and class members with meal periods;
- d. Whether Defendants deprived Plaintiff and class members of paid rest breaks or required Plaintiff and class members to work through rest breaks without compensation;

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<sup>1</sup> The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

- e. Whether Defendants failed to pay all wages to Plaintiff and class members for time spent in rest breaks;
- f. Whether Defendants failed to timely pay Plaintiff and class members all earned wages during their employment;
- g. Whether Defendants failed to timely pay Plaintiff and former class members all wages due upon termination or within 72 hours of resignation;
- h. Whether Defendants failed to furnish Plaintiff and class members with accurate itemized wage statements;
- i. Whether Defendants required Plaintiff and class members to use their personal funds for business expenses and then failed to adequately reimburse them;
- j. Whether Defendants made unlawful deductions from Plaintiff's and class members' pay;
- k. Whether Defendants' conduct was willful or reckless; and
- l. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

22. There is a well-defined community of interest in the litigation and the Class is readily ascertainable.

- (a) Numerosity: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than 100 individuals. The identity of the class members are readily ascertainable by inspection of Defendants' employment and payroll records.
- (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiff is also typical of the injuries sustained by the Class because they arise



1 out of and are caused by Defendants' common course of conduct as alleged  
2 herein.

3 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent  
4 and protect the interests of all members of the Class because it is in their best  
5 interest to prosecute the claims alleged herein to obtain full compensation and  
6 penalties due him and the Class. Plaintiff's attorneys, as proposed class  
7 counsel, are competent and experienced in litigating large employment class  
8 actions and are versed in the rules governing class action discovery,  
9 certification and settlement. Plaintiff has incurred and, throughout the  
10 duration of this action, will continue to incur attorneys' fees and costs that  
11 have been and will be necessarily expended for the prosecution of this action  
12 for the substantial benefit of each class member.

13 (d) Superiority: The nature of this action makes the use of class action  
14 adjudication superior to other methods. A class action will achieve economies  
15 of time, effort and expense as compared with separate lawsuits, and will avoid  
16 inconsistent outcomes because the same issues can be adjudicated in the same  
17 manner and at the same time for each Class. If appropriate this Court can, and  
18 is empowered to, fashion methods to efficiently manage this case as a class  
19 and/or collective action.

20 (e) Public Policy Considerations: Employers in the State of California and other  
21 states violate employment and labor laws every day. Current employees are  
22 often afraid to assert their rights out of fear of direct or indirect retaliation.  
23 Former employees are fearful of bringing actions because they believe their  
24 former employers might damage their future endeavors through negative  
25 references and/or other means. Class actions provide the class members who  
26 are not named in the complaint with a type of anonymity that allows for the  
27 vindication of their rights at the same time as affording them privacy  
28 protections.

**GENERAL ALLEGATIONS**

23. Plaintiff performed services for Defendants in California during the relevant time period. During the relevant time period, Plaintiff was classified by Defendants as an independent contractor.

24. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California wage and hour law, employment and personnel practices and the requirements of California.

25. Through this action, Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and hour violations under the California Labor Code and IWC Wage Orders, all of which contribute to Defendants' deliberate unfair competition.

26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive wages for all time worked (including minimum wages) and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members were not paid wages (including minimum wages) for all hours worked when Defendants failed to pay or underpaid Plaintiff and class members for all hours worked, and failed to pay for time spent in rest breaks, among other things.

27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive all rest breaks or payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when a rest break was missed, and were entitled to payment of wages for time spent when rest breaks were taken. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members did not receive paid rest breaks or payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when a rest break was missed.

28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive all meal periods or payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when

1 they did not receive a timely, uninterrupted meal period. In violation of the Labor Code and IWC  
2 Wage Orders, Plaintiff and class members did not receive all meal periods or payment of one (1)  
3 additional hour of pay at Plaintiff's and class members' regular rate of pay when they did not receive  
4 a timely, uninterrupted meal period.

5 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
6 should have known they had a duty to separately compensate Plaintiff and class members who were  
7 piece-rate workers for time spent during rest breaks, when rest breaks were taken. In violation of the  
8 Labor Code, Defendants did not pay piece-rate workers for time spent during rest breaks, when rest  
9 breaks were taken.

10 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
11 should have known that Plaintiff and class members were entitled to timely payment of wages during  
12 their employment. In violation of the California Labor Code, Plaintiff and class members did not  
13 receive payment of all wages within permissible time periods.

14 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
15 should have known that Plaintiff and Waiting Time class members were entitled to timely payment  
16 of wages upon separation of employment. In violation of the California Labor Code, Plaintiff and  
17 Waiting Time class members did not receive payment of all wages including, but not limited to,  
18 unpaid wages within permissible time periods.

19 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
20 should have known that Plaintiff and class members were entitled to receive complete and accurate  
21 wage statements in accordance with California law. In violation of the California Labor Code,  
22 Plaintiff and class members were not furnished with complete and accurate wage statements showing  
23 their total hours worked, number of hours or pieces worked at each hourly or piece rate, and gross  
24 and net wages, among other things.

25 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
26 should have known that Plaintiff and class members were entitled to reimbursement for necessary  
27 expenditures incurred in connection with the performance and execution of their job duties. In  
28

1 violation of the California Labor Code, Plaintiff and class members did not receive adequate  
2 reimbursement for necessary business expenses.

3 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
4 should have known that Plaintiff and class members were entitled to pay without unlawful deductions  
5 or forced patronage. In violation of the California Labor Code, Plaintiff and class members did not  
6 their wages free of unlawful deductions.

7 35. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned  
8 herein, Defendants knew or should have known that it had a duty to compensate Plaintiff and class  
9 members, and that Defendants had the financial ability to pay such compensation but willfully,  
10 knowingly and intentionally failed to do so, all in order to increase Defendants' profits.

11 36. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief against  
12 Defendants on behalf of himself and all class members to recover, among other things, unpaid wages,  
13 interest, attorneys' fees, penalties, reimbursements, costs and expenses.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

16 **(Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197; Violation of IWC Wage Order)**

17 37. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
18 though fully set forth herein.

19 38. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees fixed  
20 by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than  
21 the minimum so fixed is unlawful.

22 39. During the relevant time period, failed to pay Plaintiff and class members all  
23 minimum wages owed when Defendants did not pay for all hours worked, and did not pay for time  
24 spent in rest breaks, among other reasons. Plaintiff and class members were not being paid at least  
25 minimum wage for their work.

26 40. During the relevant time period, Defendants regularly failed to pay at least minimum  
27 wage to Plaintiff and class members for all hours worked pursuant to Labor Code §§ 1194 and 1197.  
28

1           41. Defendants' failure to pay Plaintiff and class members the minimum wage as required  
2 violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and class members are  
3 entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs  
4 and attorney's fees.

5           42. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to recover  
6 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

7                           **SECOND CAUSE OF ACTION**

8                           **FAILURE TO PROVIDE MEAL PERIODS**

9                           **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

10           43. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
11 though fully set forth herein

12           44. Labor Code § 226.7 provides that no employer shall require an employee to work  
13 during any meal period mandated by the IWC Wage Orders.

14           45. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall employ  
15 any person for a work period of more than five (5) hours without a meal period of not less than 30  
16 minutes, except that when a work period of not more than six (6) hours will complete the day's  
17 work the meal period may be waived by mutual consent of the employer and the employee."

18           46. Labor Code § 512(a) provides that an employer may not require, cause, or permit  
19 an employee to work for a period of more than five (5) hours per day without providing the  
20 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the  
21 total work period per day of the employee is not more than six (6) hours, the meal period may be  
22 waived by mutual consent of both the employer and the employee.

23           47. Labor Code § 512(a) also provides that an employer may not employ an employee  
24 for a work period of more than ten (10) hours per day without providing the employee with a second  
25 meal period of not less than thirty (30) minutes, except that if the total hours worked is no more  
26 than twelve (12) hours, the second meal period may be waived by mutual consent of the employer  
27 and the employee only if the first meal period was not waived.  
28





## **FAILURE TO PAY ALL WAGES TO PIECE-RATE WORKERS FOR REST BREAKS**

16            59. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as  
17 though fully set forth herein.

61. Labor Code § 226.2(a) provides that employees compensated on a piece-rate basis shall be compensated for rest and recovery periods, and other nonproductive time separate from any piece-rate compensation. Employees shall be compensated at a regular hourly rate that is no less than the higher of (a) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods. (b) The applicable minimum wage.



62. During the relevant time period, Plaintiff and Class Members paid on a piece-rate basis were not compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

63. At all relevant times, Defendants knowingly and intentionally failed to comply with Labor Code § 226.2 denying compensated rest and recovery periods to employees paid on a piece-rate basis.

64. As a result of Defendants' failure to pay Plaintiff and Class Members compensated rest and recovery periods, Plaintiff and Class Members suffered and continue to suffer a loss of wages and compensation.

#### **FIFTH CAUSE OF ACTION**

#### **FAILURE TO PAY WAGES UPON SEPARATION**

#### **OF EMPLOYMENT AND WITHIN THE REQUIRED TIME**

**(Violations of Labor Code §§ 201, 202, 203; Violation of IWC Wage Order)**

65. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as though fully set forth herein.

66. California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

67. During the relevant time period, Defendants willfully failed to pay Plaintiff and Waiting Time Subclass Members all their earned wages upon termination including, but not limited to, minimum wages, either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

68. Defendants' failure to pay Plaintiff and Waiting Time Subclass Members all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

69. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed promptly upon discharge or resignation as required under California Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

70. Defendants willfully failed to pay Plaintiff and Waiting Time Subclass Members all wages due and, as a result, owe Plaintiff and Waiting Time Subclass Members regular daily wages for each day they were not paid, at their regular rates of pay up to a thirty (30) day maximum pursuant to California Labor Code § 203 all in an amount to be shown according to proof at trial.

71. Based on these violations, Plaintiff and the Waiting Time Subclass they seek to represent request relief as described herein and below.

## SIXTH CAUSE OF ACTION

## **FAILURE TO TIMELY PAY WAGES**

**(Violation of Labor Code §§ 204, 210; Violation of IWC Wage Order)**

72. Plaintiff hereby re-allege and incorporate by reference the previous paragraphs, as though fully set forth herein.

73. Labor Code § 204 provides, in pertinent part, “Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

74. Defendants failed to timely pay Plaintiff and class members all of their earned wages as required by Labor Code Section 204.

75. Plaintiff and class members have been deprived of their rightfully earned wages as a direct and proximate result of Defendants' failure to pay said compensation. Plaintiff and class members are entitled to recover such amounts, plus interest thereon, attorney's fees and costs.

76. In addition, Plaintiff and class members are entitled to penalties pursuant to Labor Code § 210 as follows: (1) for Defendants' initial violation, \$100 for each failure to pay each Class

1 Member; and (2) for each of Defendants' subsequent violations, or any willful or intentional  
2 violation, \$200 for each failure to pay each Class Member, plus 25 percent of the amount unlawfully  
3 held.

4 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

6 **(Violation of Labor Code § 226; Violation of IWC Wage Order)**

7 77. Plaintiff hereby re-allege and incorporate by reference the previous paragraphs, as  
8 though fully set forth herein.

9 78. California Labor Code § 226(a) requires employers to furnish their employees with  
10 an accurate itemized writing that shows gross wages earned, total hours worked, all deductions, net  
11 wages earned, the inclusive dates of the period for which the employee is paid, the name of the  
12 employee and the portion of his or her social security number as required by law, the name and  
13 address of the legal entity that is the employer and all applicable hourly rates in effect during the pay  
14 period and the corresponding number of hours worked at each hourly rate by the employee.

15 79. In addition, pursuant to Labor Code § 226.2(a)(2), the itemized statements of  
16 employees paid on a piece-rate basis shall also state (1) the total hours of compensable rest and  
17 recovery periods, the rate of compensation, and the gross wages paid for those periods during the  
18 pay period; and (2) the total hours of other nonproductive time, the rate of compensation, and the  
19 gross wages paid for that time during the pay period.

20 80. Defendants have intentionally and willfully failed to provide Plaintiff and class  
21 members with complete and accurate wage statements. The deficiencies include, among other things,  
22 the failure to list the gross wages earned, net wages earned, hours worked, and all applicable hourly  
23 rates in effect during the pay period.

24 81. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and  
25 class members have suffered injury and damage to their statutorily protected rights. Specifically,  
26 Plaintiff and class members have been injured by Defendants' intentional violation of California  
27 Labor Code § 226(a) because they were denied both their legal right to receive, and their protected  
28 interest in receiving, accurate itemized wage statements under California Labor Code § 226(a). In

1 addition, because Defendants failed to provide the accurate rates of pay on wage statements,  
 2 Defendants have prevented Plaintiff and class members from determining if all hours worked were  
 3 paid at the appropriate rate and the extent of the underpayment. Plaintiff has had to file this lawsuit  
 4 in order to analyze whether in fact Plaintiff was paid correctly and the extent of the underpayment,  
 5 thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in  
 6 these efforts and incur these costs had Defendants provided the accurate rate of pay. This has also  
 7 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

8 82. California Labor Code § 226(a) requires an employer to pay the greater of all actual  
 9 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one  
 10 hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's  
 11 fees and costs, to each employee who was injured by the employer's failure to comply with California  
 12 Labor Code § 226(a).

13 83. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and  
 14 class members from knowing, understanding and disputing the wages paid to them, and resulted in  
 15 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and  
 16 intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members have  
 17 suffered an injury, the exact amount of damages and/or penalties is all in an amount to be shown  
 18 according to proof at trial.

19 84. Plaintiff and class members are also entitled to injunctive relief under California  
 20 Labor Code § 226(g), compelling Defendants to comply with California Labor Code § 226, and seek  
 21 the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

## 22 EIGHTH CAUSE OF ACTION

### 23 FAILURE TO REIMBURSE ALL BUSINESS EXPENSES

#### 24 (Violation of Labor Code §§ 2800, 2802; Violation of IWC Wage Order)

25 85. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
 26 though fully set forth herein.

27 86. Labor Code § 2800 states that an employer shall in all cases indemnify its employee  
 28 for losses.

7            89.        During the relevant time period, Defendants required Plaintiff and class members to  
8        download an app onto their personal cellular devices in order to view, accept and process jobs,  
9        without paying Plaintiff and class members for a reasonable percentage of their cell phone bills.

91. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify Plaintiff and class members for these expenses.

19 NINTH CAUSE OF ACTION

21 (Violation of Labor Code §§ 221, 450; Violation of IWC Wage Order)

24           94.     Labor Code § 221 provides, in pertinent part, “[i]t shall be unlawful for any employer  
25     to collect or receive from an employee any part of wages theretofore paid by said employer to said  
26     employee.”

17

1 patronize his or her employer, or any other person, in the purchase of any thing of value.”

2 96. During the relevant time period, Defendants made unlawful deductions from  
3 Plaintiff’s and class members’ wages and required forced patronage.

4 97. Defendants’ violation of Labor Code §§ 221 and 450 caused Plaintiffs and class  
5 members to suffer substantial monetary losses, and expenses and attorney’s fees in seeking to  
6 compel Defendants to fully perform their obligations under California law, as a result Plaintiff and  
7 class members suffered and continue to suffer a loss of wages and compensation.

8 **TENTH CAUSE OF ACTION**

9 **UNFAIR BUSINESS PRACTICES**

10 **(Violation of Business and Professions Code §§ 17200 *et seq.*)**

11 98. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as  
12 though fully set forth herein.

13 99. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair  
14 competition, which includes any "unlawful, unfair or fraudulent business act or practice . . . ."

15 100. A violation of California Business and Professions Code §§ 17200, *et seq.* may be  
16 predicated on the violation of any state or federal law. In the instant case, Defendants’ policies and  
17 practices have violated state law causing Plaintiff and class members to suffer and continue to suffer  
18 injuries in fact. As alleged herein, Defendants systematically engaged in unlawful conduct in  
19 violation of the California Labor Code and IWC Wage Orders, such as failing to pay minimum  
20 wages, failing to authorize or permit paid rest breaks, failing to provide meal periods, failing to pay  
21 wages for time spent in rest breaks and/or recovery periods, failing to pay all wages due and owing  
22 upon separation of employment and in a timely manner, failing to timely pay wages during  
23 employment, failing to furnish accurate wage statements, failing to reimburse business expenses, and  
24 failing to refrain from unlawful deductions, all in order to decrease their costs of doing business and  
25 increase their profits.

26 101. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and  
27 class members wages and monies, thereby creating for Defendants an artificially lower cost of doing  
28



1 business in order to undercut their competitors and establish and/or gain a greater foothold in the  
2 marketplace.

3 102. At the time Plaintiff and class members were hired, Defendants knowingly,  
4 intentionally and wrongfully misrepresented to each of them their conformance with the California  
5 Labor Code and IWC Wage Orders including proper payments required by law.

6 103. At all relevant times herein, Defendants held themselves out to Plaintiff and class  
7 members as being knowledgeable concerning the labor laws of California.

8 104. At all times relevant herein, Plaintiff and class members relied on and believed  
9 Defendants' representations concerning their conformance with California's wage and hour laws all  
10 to their detriment.

11 105. As a result of Defendants' intentional, willful, purposeful and wrongful  
12 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,  
13 Plaintiff and class members suffered a loss of wages and monies, all in an amount to be shown  
14 according to proof at trial. By violating the foregoing statutes and regulations as herein alleged,  
15 Defendants' acts constitute unfair and unlawful business practices under California Business and  
16 Professions Code §§ 17200, *et seq.*

17 106. Defendants' violations of the California Labor Code and IWC Wage Orders and their  
18 scheme to lower their payroll costs as alleged herein, constitute unlawful business practices because  
19 they were done in a systematic manner over a period of time to the detriment of Plaintiff and class  
20 members.

21 107. As a result of the unfair business practices of Defendants, as alleged herein, Plaintiff  
22 and class members are entitled to injunctive relief, disgorgement and restitution in an amount to be  
23 shown according to proof at trial.

24 108. Plaintiff seeks to enforce important rights affecting the public interest within the  
25 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has  
26 been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members and to the general  
27 public. Based on Defendants' conduct as alleged herein, Plaintiff and class members are entitled to  
28 an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.



ELEVENTH CAUSE OF ACTION

**ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

109. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as though fully set forth herein.

110. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

111. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

112. Defendants' conduct violates numerous Wage Order and Labor Code sections, including, but not limited to, the following:

- (a) violation of Labor Code §§ 201-203, 204, 210, 226.2, 558, 1182.12, 1194, 1194.2, 1197, and 1197.1 for failure to timely pay all earned wages (including minimum wage wages) owed to Plaintiff and other aggrieved employees during employment and upon separation of employment as herein alleged;
- (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;
- (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;

- 1 (d) violation of Labor Code § 226.2 for failure to pay all wages to Plaintiff and  
2 other piece-rate workers for rest periods as herein alleged;
- 3 (e) violation of Labor Code §§ 226 and 226.3 for failure to provide accurate  
4 itemized wage statements to Plaintiff and other aggrieved employees as  
5 herein alleged;
- 6 (f) violation of Labor Code §§ 226.8 and 2750.3 for willful misclassification of  
7 Plaintiff and other aggrieved employees as independent contractors as herein  
8 alleged;
- 9 (g) violation of Labor Code §§ 221, 225.5 and 450 for unlawful deductions from  
10 Plaintiff and other aggrieved employees wages;
- 11 (h) violation of Labor Code §§ 2800 and 2802 for failing to reimburse business  
12 expenses incurred by Plaintiff and other aggrieved employees; and
- 13 (i) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate  
14 and complete records showing, among other things, the hours worked daily  
15 by and the wages paid to aggrieved employees.

16 113. Plaintiff is an “aggrieved employee” because he was employed by the alleged  
17 violator and had one or more of the violations committed against him, and therefore is properly  
18 suited to represent the interests of all other aggrieved employees.

19 114. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to  
20 Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other  
21 aggrieved employees under PAGA.

22 115. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover  
23 civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

24 116. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred  
25 herein.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff, on behalf of all others similarly situated, pray for judgment against  
28 Defendants as follows:

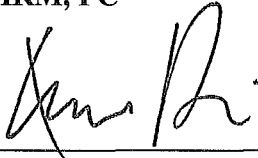
- 1           1.     For certification of the proposed Class and Waiting Time Subclass and any other
- 2 appropriate subclasses under California Code of Civil Procedure § 382;
- 3           2.     For appointment of Sigifredo Perez Jr. as the class representative;
- 4           3.     For appointment of Aegis Law Firm, PC and Law Offices of Neda Aguirre, APC as
- 5 class counsel for all purposes;
- 6           4.     For general damages;
- 7           5.     For special damages;
- 8           6.     For liquidated damages pursuant to California Labor Code § 1194.2;
- 9           7.     For statutory penalties to the extent permitted by law, including those pursuant to the
- 10 California Labor Code and IWC Wage Orders;
- 11           8.     For injunctive relief as provided by the California Labor Code and California
- 12 Business and Professions Code §§ 17200, *et seq.*;
- 13           9.     For restitution as provided by California Business and Professions Code §§ 17200, *et*
- 14 *seq.*;
- 15           10.    For an order requiring Defendants to restore and disgorge all funds to each employee
- 16 acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent
- 17 and, therefore, constituting unfair competition under California Business and Professions Code §§
- 18 17200, *et seq.*;
- 19           11.    For an award of damages in the amount of unpaid compensation including, but not
- 20 limited to, unpaid wages, benefits and penalties according to proof, including interest thereon;
- 21           12.    For pre-judgment interest;
- 22           13.    For civil penalties;
- 23           14.    For reasonable attorney's fees and costs of suit to the extent permitted by law,
- 24 including pursuant to California Code of Civil Procedure § 1021.5 and California Labor Code
- 25 §§ 226(e), 1194, 2698 *et seq.*, 2802(c); and
- 26 ///
- 27 ///
- 28 ///

1           15.     For such other relief as the Court deems just and proper.

2  
3  
4     Dated: August 31, 2020

**AEGIS LAW FIRM, PC**

5  
6  
7     By: \_\_\_\_\_



Alexander G. Davies  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On September 1, 2020, I served the foregoing document entitled:

• **FIRST AMENDED CLASS ACTION COMPLAINT**

on all the appearing and/or interested parties in this action by delivering ☐ *the original*  
☒ *a true copy* thereof on the party(ies) addressed below as follows:

R. Scott Brink  
James M. Neudecker  
Taylor N. Burras  
JEFFER MANGELS BUTLER & MITCHELL  
LLP  
1900 Avenue of the Stars, 71h Floor  
Los Angeles, CA 90067  
Tel.: (310) 203-8080  
[rsb@jmbm.com](mailto:rsb@jmbm.com)  
[jln@jmbm.com](mailto:jln@jmbm.com)  
[tnb@jmbm.com](mailto:tnb@jmbm.com)

*Attorneys for Defendant:*  
Sierra Mountain Express, Inc.

☒ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed. R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business practice of Aegis Law Firm PC for collection and processing correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal Code Civ. Proc.* § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

☐ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via electronic transmission via the above listed email addresses on the date below. (*Cal. Code Civ. Proc.* § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.* 5(b)(2)(A).)

///

///

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct.

3 Executed on September 1, 2020, at Irvine, Californ



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5 \_\_\_\_\_  
6 Andrea Drocco  
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EXHIBIT  
"C"



1 JEFFER MANGELS BUTLER & MITCHELL LLP  
R. SCOTT BRINK (Bar No. 138644)  
2 *rsb@jmbm.com*  
JAMES NEUDECKER (Bar No. 221657)  
3 *jneudecker@jmbm.com*  
TAYLOR N. BURRAS (Bar No. 279744)  
4 *tburras@jmbm.com*  
1900 Avenue of the Stars, 7th Floor  
5 Los Angeles, California 90067-4308  
Telephone: (310) 203-8080  
6 Facsimile: (310) 203-0567

7 Attorneys for Defendant Sierra Mountain  
Express, Inc., and Defendant William E. Scanlon

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SACRAMENTO

11 GORDON D. SCHABER SACRAMENTO COUNTY COURTHOUSE

12 SIGIFREDO PEREZ JR., individually and on  
behalf of all others similarly situated and on  
behalf of the general public,

13 Plaintiffs,

14 v.

15 SIERRA MOUNTAIN EXPRESS, INC., a  
16 limited liability company, and DOES 1  
through 10, inclusive, WILLIAM E  
17 SCANLON, and DOES 1 through 10,  
inclusive,

18 Defendants.  
19

Case No. 34-2020-00279284

**DEFENDANTS SIERRA MOUNTAIN,  
INC.'S AND WILLIAM SCANLON'S  
ANSWER TO COMPLAINT**

The Hon. Richard K. Sueyoshi, Dept. 40

Action Filed: May 21, 2020  
Trial Date: Not Set

20  
21 Pursuant to §§ 431.10, *et seq.*, of the California Code of Civil Procedure, Defendants  
22 Sierra Mountain Express, Inc. and William Scanlon (collectively, "Defendants") hereby submit  
23 their Answer to the First Amended Class Action Complaint (the "Complaint") of Plaintiff  
24 Sigifredo Perez ("Plaintiff") that was filed on September 2, 2020.

25 **GENERAL DENIAL**

26 Defendants deny generally and specifically that Plaintiff is entitled to general,  
27 compensatory, liquidated, exemplary, punitive or other damages, in any amount, by reason of any  
28 act or omission to act on the part of Defendants, or any agent, servant, employee or representative

1 of Defendants. Defendants further generally and specifically deny all class action allegations set  
2 forth in the Complaint.

3 **AFFIRMATIVE DEFENSES**

4 Without admitting any of the allegations of the Complaint, Defendants plead the following  
5 separate and affirmative defenses. Defendants reserve the right to assert additional affirmative  
6 defenses that discovery indicates are proper.

7 **FIRST AFFIRMATIVE DEFENSE**

8 **(Failure to State a Claim)**

9 1. As a separate and first affirmative defense to the Complaint, and to the purported  
10 causes of action set forth therein, Defendants allege that the Complaint fails to state facts sufficient  
11 to constitute a cause of action.

12 **SECOND AFFIRMATIVE DEFENSE**

13 **(Statute of Limitations)**

14 2. As a separate and affirmative defense to the Complaint, Plaintiff's claims are  
15 barred, in whole or in part, by the applicable statutes of limitation.

16 **THIRD AFFIRMATIVE DEFENSE**

17 **(Unclean Hands)**

18 3. As a separate and affirmative defense to the Complaint, Plaintiff's purported causes  
19 of action are barred as a result of the acts and omissions in matters relevant to the Complaint  
20 because Plaintiff has unclean hands and is therefore barred from asserting claims against  
21 Defendants. Plaintiff has committed one or more of the acts alleged against Defendants in this  
22 action.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 **(Laches)**

25 4. As a separate and affirmative defense to the Complaint, Plaintiff's purported causes  
26 of action are barred as Plaintiff cannot recover damages or penalties against Defendants by reason  
27 of the doctrine of laches and undue delay in giving notice of the matters alleged in the Complaint.  
28 Plaintiff unreasonably delayed in putting Defendants on notice of the claims alleged in the

1 Complaint and unreasonably delayed in bringing the claims alleged in the Complaint against  
2 Defendants.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 **(Failure to Exhaust Administrative Remedies)**

5 5. As a separate and affirmative defense to the Complaint, Plaintiff's claims, as well as  
6 the claims of the putative class, are barred, in whole or in part, by their failure to exhaust  
7 administrative and internal remedies.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 **(All Monies Paid; Set-off; *De Minimus*)**

10 6. As a separate and affirmative defense to the Complaint, Plaintiff's claims, as well as  
11 the claims of putative class members, are barred because any compensation and/or monies due  
12 have been paid or have been overpaid. Defendants are entitled to a credit or set-off for any  
13 additional compensation and/or monies paid to Plaintiff and putative class members. Any  
14 underpayment has been reimbursed or is de minimus, and made in good faith.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 **(Good Faith)**

17 7. As a separate and affirmative defense to the Complaint, Defendants have at all  
18 relevant times acted reasonably and in good faith with respect to payment to Plaintiff and putative  
19 class members for their services.

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 **(Good Faith Dispute Over Wages)**

22 8. As a separate and affirmative defense to the Complaint, Plaintiff's causes of action  
23 are barred as Plaintiff and putative class members cannot recover damages or penalties under  
24 PAGA or other Labor Code provision based on Defendants' alleged failure to timely pay wages to  
25 the extent that there was a good faith dispute regarding any wages purportedly due.

**NINTH AFFIRMATIVE DEFENSE**

**(No Standing)**

9. As a separate and affirmative defense to the Complaint, Plaintiff and putative class members lack standing to sue because they have not suffered actual injury as a result of the conduct alleged in the Complaint.

**TENTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

10. As a separate and affirmative defense to the Complaint, Plaintiff and putative class members have failed to mitigate or attempt to mitigate, if in fact any damages have been or will be sustained, and any recovery by Plaintiff or putative class members must be diminished or barred by reason thereof. To the extent that Plaintiff or putative class members believed their substantive rights were being violated during their service for Defendants and failed to notify Defendants of same, Plaintiff and putative class members should not be entitled to claim ongoing damages against Defendants due to their alleged failure to remedy a harm of which such Plaintiff and putative class members were aware but chose to remain silent.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Wage Order)**

11. As a separate and affirmative defense, one or more of Plaintiff's claims or causes of action, as well as the claims of putative class members, are preempted or barred by the applicable industry wage order.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Preemption)**

12. As a separate and affirmative defense to the Complaint, Plaintiff's purported causes of action are preempted and thus barred, in whole or in part, by applicable state or federal laws, statutes and/or regulations.

**THIRTEENTH AFFIRMATIVE DEFENSE****(Released Claims)**

13. The matters alleged in the Complaint are encompassed within and barred, in whole or in part, by settlement and release agreements reached by members of the putative class and Defendants that operate as a merger and bar against any further litigation on matters raised or potentially raised in connection with the settlement and release.

**FOURTEENTH AFFIRMATIVE DEFENSE****(Res Judicata / Collateral Estoppel)**

14. The Complaint and Plaintiff's purported causes of action alleged therein are barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel as to Plaintiffs and the putative class members to the extent their claims have been adjudicated in other proceedings. These other proceedings including, without limitation, *Pablo Ventura v. Sierra Mountain Express, Inc.* (San Bernardino Case No. CIVDS 1513364) consolidated with *Jaime Garcia v. Sierra Mountain Express, Inc.* (Case No. CIVDS 1518765), and their subsequently filed arbitration, JAMS Arbitration No. 1220055029.

**FIFTEENTH AFFIRMATIVE DEFENSE****(Reasonable Belief of No Violation)**

15. The Complaint and Plaintiff's purported causes of action are barred because any acts or omissions of Defendants were in good faith, and Defendants had reasonable grounds for believing that there was no violation of state or federal wage and hour laws.

**SIXTEENTH AFFIRMATIVE DEFENSE****(Independent Contractor)**

16. As a separate and affirmative defense to the Complaint, Defendants assert that Plaintiff's causes of action fail because Plaintiff and the putative class members were not employed by Defendants at any relevant time, but were correctly classified as independent contractors and thus have no standing to sue for any violations under the California Labor Code.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(No Rest Period Violations)**

17. As a separate and affirmative defense to the Complaint, Plaintiff's claims for denial of rest breaks, as well as the claims of putative class members, fail because Plaintiff and putative class members were at all times authorized and permitted to take rest periods in accordance with the law, as they were in control of the manner in which they performed their services, but freely chose to forego or waive the rest periods.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(No Meal Period Violations)**

18. As a separate and affirmative defense to the Complaint, Plaintiff's claims for denial of meal periods, as well as the claims of putative class members, fail because Plaintiff and putative class members were at all times authorized and permitted to take meal periods in accordance with the law, as they were in control of the manner in which they performed their services, but freely chose to forego or waive the rest periods.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Payment; Waiver; Estoppel; Ratification; Accord and Satisfaction; Offset)**

19. As a separate and affirmative defense to the Complaint, Plaintiff claims are barred, in whole or in part, by the doctrines of payment, waiver, estoppel, ratification, accord and satisfaction, and/or offset.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(PAGA Claims Not Suitable for Class Action)**

20. As a separate and affirmative defense to the Complaint, Defendants allege Plaintiff and putative class members' claims for penalties under the Private Attorneys General Act, Labor Code section 2698 *et seq.* ("PAGA") cannot be reasonably managed and/or determined on a class or community-wide basis.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Excessive Fines)**

21. As a separate and affirmative defense to the Complaint, Defendants assert that the Complaint, and each and every alleged cause of action therein, or some of them, are barred because the PAGA violates the prohibition against excessive fines in violation of the Eighth Amendment to the United States Constitution and Article I, Section 7 of the California Constitution. *See People ex rel Lockyer v. R.J. Reynolds Tobacco Co.* (2005) 37 Cal.4th 707.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Failure to Exhaust Administrative Remedies Under PAGA)**

22. As a separate and affirmative defense to the Complaint, Defendants assert that Plaintiff's causes of action fail because Plaintiff failed to exhaust his administrative remedies under PAGA, and Plaintiff failed, *inter alia*, to specify all facts and theories to support the alleged violation as required under Labor Code section 2699.3(a)(1).

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**(Putative Class Members Are Not "Aggrieved Employees")**

23. As a separate and affirmative defense to the Complaint, Plaintiff's purported cause of action brought under PAGA is barred to the extent that he seeks to recover penalties on behalf of individuals who are not "aggrieved employees."

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

**(Agreement to Arbitrate)**

24. As a separate affirmative defense to the Complaint and Plaintiff's purported causes of action contained therein, Defendants assert that Plaintiff's claims are barred as Defendants have an agreement to arbitrate the claims alleged in the Complaint with Plaintiffs and/or the putative class members.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

**(Consent)**

25. As a separate and affirmative defense to the Complaint and each purported cause of action contained therein, Defendants allege that Plaintiff is barred from prosecuting the purported



1 causes of action set forth in the Complaint because Plaintiff, and/or the persons and/or entities  
2 acting on his behalf, consented to and acquiesced in the subject conduct.

3 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

4 **(No Penalties for Avoidance of Payment Tendered)**

5 26. The Complaint and Plaintiff's purported causes of action alleged therein are barred  
6 as Plaintiff and the putative class members cannot recover damages or penalties to the extent they  
7 avoided payments tendered by Defendants.

8 WHEREFORE, Defendants pray for relief as follows:

- 9 1. That the First Amended Complaint be dismissed, with prejudice and in its entirety;  
10 2. That Plaintiff take nothing by reason of this First Amended Complaint and that  
11 judgment be entered against Plaintiff and in favor of Defendants;  
12 3. That Defendants be awarded the costs incurred in defending this action;  
13 4. That Defendants be granted such other and further relief as the Court may deem  
14 just and proper.

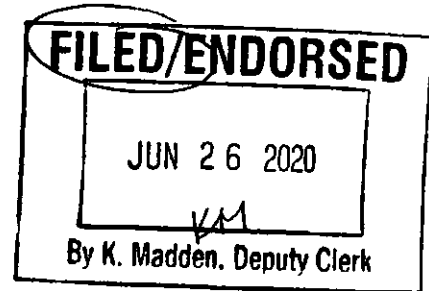
15  
16  
17 DATED: October 5, 2020

JEFFER MANGELS BUTLER & MITCHELL LLP  
R. SCOTT BRINK  
JAMES NEUDECKER  
TAYLOR N. BURRAS

18  
19  
20  
21 By: 

22 TAYLOR N. BURRAS  
23 Attorneys for Defendant Sierra Mountain Express,  
24 Inc.  
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27  
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EXHIBIT  
"D"



**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO**

11 SIGIFREDO PEREZ JR., individually and on ) 12 behalf of all others similarly situated and on ) 13 behalf of the general public, ) 14 Plaintiffs, ) 15 v. ) 16 SIERRA MOUNTAIN EXPRESS, INC., a ) 17 limited liability company, and DOES 1 ) 18 through 10, inclusive, ) 19 Defendants. ) 20 _____ )	No. 34-2020-00279284  <b>NOTICE OF CASE MANAGEMENT CONFERENCE AND COMPLEX CASE MANAGEMENT PROCEDURES</b>  Complex Civil Dept.: 40 Judge Richard K. Sueyoshi
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**THIS NOTICE SHALL BE SERVED BY PLAINTIFF'S COUNSEL ON ALL  
OTHER PARTIES. ANY PARTY WHO HEREAFTER SERVES A NEW PARTY  
SHALL SERVE A COPY OF THIS NOTICE ON THE NEW PARTY ALONG WITH  
THE SUMMONS AND COMPLAINT OR CROSS-COMPLAINT.**

1. Pursuant to the Presiding Judge's Notice and Order of Complex Case  
Determination, the above-referenced case has been designated as complex, assigned to this  
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2 matters shall be heard in Departments 53/54 per Local Rule 2.30, et seq., unless otherwise  
3 directed by this Court. Motions for consolidation, severance, bifurcation, intervention and to  
4 continue trial shall be heard in this department unless otherwise directed by this Court. Other  
5 motions referenced in Local Rule 1.05 shall be heard by the Presiding Judge.

6 2. The Court orders all parties to appear for a **Case Management Conference on**  
7 **December 18, 2020 at 10:00 a.m., in Department 40.** Counsel who wish to appear by  
8 telephone are responsible for making all CourtCall arrangements.

9 3. The Court orders the parties to meet and confer prior to the CMC pursuant to  
10 California Rule of Court 3.724. The parties' meet-and-confer session shall include discussion of,  
11 among other things, the possibility of early mediation, the identification of additional potential  
12 parties, and plans for discovery. All such matters shall be reported in the parties' CMC  
13 Statements.

14 4. All parties shall file CMC Statements no later than 15 calendar days prior to the  
15 CMC, with a courtesy copy emailed to Dept40@saccourt.ca.gov. The Court encourages the  
16 parties to file joint CMC Statements. The Court orders that in lieu of using standard form CM-  
17 110, the parties may and are encouraged to prepare more descriptive case management  
18 statements, providing additional information relevant to the complex case management of this  
19 case. CMC statements may be filed at the main civil counter.

20 5. Each party shall be prepared to participate effectively in the CMC, including, but  
21 not limited to, being thoroughly familiar with the case and able to discuss the suitability of  
22 private mediation, arbitration, and/or the use of a special master or referee.

23 6. Should the parties stipulate and request a continuance of the CMC given the early  
24 status of the case, they shall indicate such in their CMC Statements (preferably in a joint CMC  
25 Statement), the reasons for such request, and the date range for which they agree to a new CMC  
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27 7. Tentative Rulings: The Court may or may not issue a tentative ruling prior to the  
28 scheduled CMC. Counsel are directed to check the Court's tentative rulings after 2:00 p.m. the

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10 This shall include pleading motions, discovery motions and dispositive motions. Motions for  
11 preliminary approval and for final approval of settlement shall also be heard in Departments  
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14 other considerations.

15 9. Other Motions: Motions for consolidation, severance, bifurcation, intervention  
16 and to continue trial shall be heard in this department unless otherwise directed by this Court.  
17 Trial-related motions shall be heard in this department unless otherwise directed by this Court.  
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19 10. Filings: Law and Motion filings shall be made pursuant to Department 53/54  
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22 Department 47 procedures. CMC Statements may be filed at the main civil counter, with  
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24 11. Typical Case Progress:

- 25 a. After the initial CMC or a subsequent CMC, the Court may or may not issue a  
26 formal *Case Management Order* ("CMO"). In lieu of a formal CMO, the  
27 Court may issue minute orders after CMCs addressing case management  
28 topics. The breadth of such orders may vary depending upon factors such as

the complexity of the case and other circumstances. The Court may issue subsequent CMOs potentially addressing topics such as discovery cut-offs, phased discovery, disclosure dates, timing of private mediation, timing of class certification motions, etc. In some cases, CMOs may be proposed by an appointed special master or referee with case management authority.

- b. Pursuant to the Presiding Judge's Notice and Order of Complex Case Determination, this Court is the trial department for this case. This Court remains the trial court unless subsequently ordered otherwise. In rare instances, a case may be transferred to Department 47 for assignment to a different trial department if this Court has scheduling conflicts due to another trial or otherwise is unable to proceed with trial.
- c. The Court will schedule a Trial Setting Conference at which time a precise trial date shall be set in this department. The Court will issue a *Complex Trial Setting Order* ("TSO") which shall set the Mandatory Settlement Conference in Department 59, a Final Status Conference, a Final Pre-Trial Conference, and the trial date. The TSO shall also address deadlines for trial-related tasks and filings, including motions in limine, witness and exhibit lists, proposed jury instructions, jury questionnaires, etc.

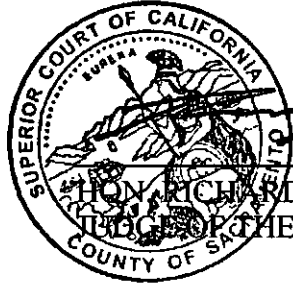
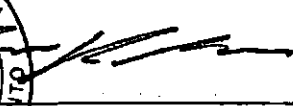
12. The following interim orders shall be in effect:

- a. Plaintiff(s) shall diligently locate and serve each defendant. It is the Court's intention, by this order, that all parties shall be served in sufficient time to have made an appearance within the time allowed under law prior to attending the first CMC.
- b. Counsel shall continuously ensure that they have no legal conflicts of interest as to any present or anticipated parties so that counsel may participate fully in the CMC and this case.

1           13.     The Court strongly encourages the parties to engage in early and meaningful  
2 alternative dispute resolution.

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5           **IT IS SO ORDERED.**

6  
7           DATED: June 26, 2020

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11           HON. RICHARD K. SUEYOSHI  
12           JUDGE OF THE SUPERIOR COURT  
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**CASE NUMBER: 34-2020-00279284****DEPARTMENT: 40****CASE TITLE: SIGIFREDO PEREZ JR. V. SIERRA MOUNTAIN EXPRESS****PROCEEDINGS: COMPLEX TRIAL SETTING ORDER****CERTIFICATE OF SERVICE BY MAILING****(C.C.P. Sec. 1013a(4))**

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing **NOTICE OF CASE MANAGEMENT CONFERENCE AND COMPLEX CASE MANAGEMENT PROCEDURES** by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at 720 9<sup>th</sup> Street, Sacramento, California, 95814 each of which envelopes was addressed respectively to the persons and addresses shown below:

Samuel A. Wong Kashif Haque Jessica L. Campbell 9811 Irvine Center Drive, Suite 100 Irvine, California 92618	
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I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

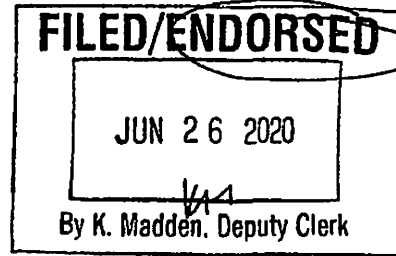
Dated: 6/26/2020

Superior Court of California, County of  
SacramentoBy: K. Madden  
K.Madden , Deputy Clerk

DEPT : 40  
DATE : 6/25/2020  
CASE NO. : 34-2020-00278994  
CASE TITLE : SIGIFREDO PEREZ JR. V. SIERRA  
MOUNTAIN EXPRESS, INC.

Superior Court of California,  
County of SacramentoBY: K.MADDEN,  
Deputy Clerk





**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO**

SIGIFREDO PEREZ JR., individually and on behalf of all others similarly situated and on behalf of the general public,  Plaintiffs,  v.  SIERRA MOUNTAIN EXPRESS, INC., a limited liability company, and DOES 1 through 10, inclusive,  Defendants.	) No. 34-2020-00279284 ) ) ) ) <b>NOTICE OF CASE MANAGEMENT</b> ) <b>CONFERENCE AND COMPLEX CASE</b> ) <b>MANAGEMENT PROCEDURES</b> ) ) ) ) <b>Complex Civil Dept.: 40</b> ) <b>Judge Richard K. Sueyoshi</b> ) ) )
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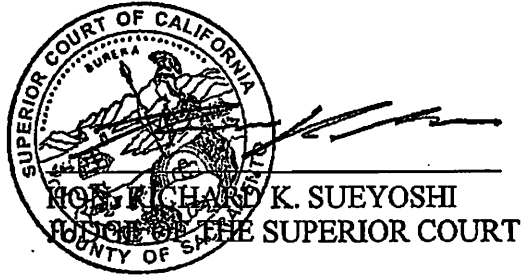
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3  
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5           **IT IS SO ORDERED.**

6  
7     DATED: June 26, 2020



**CASE NUMBER: 34-2020-00279284**

**DEPARTMENT: 40**

**CASE TITLE: SIGIFREDO PEREZ JR. V. SIERRA MOUNTAIN EXPRESS**

**PROCEEDINGS: COMPLEX TRIAL SETTING ORDER**

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Samuel A. Wong Kashif Haque Jessica L. Campbell 9811 Irvine Center Drive, Suite 100 Irvine, California 92618	
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I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: 6/26/2020

Superior Court of California, County of  
Sacramento

By: K. Madden  
K.Madden, Deputy Clerk

DEPT : 40  
DATE : 6/25/2020  
CASE NO. : 34-2020-00278994  
CASE TITLE : SIGIFREDO PEREZ JR. V. SIERRA  
MOUNTAIN EXPRESS, INC.

Superior Court of California,  
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BY: K.MADDEN,  
Deputy Clerk



**SUPERIOR COURT OF CALIFORNIA**  
COUNTY OF SACRAMENTO  
SACRAMENTO, CALIFORNIA, 95814  
916-874-5522  
[WWW.SACCOURT.CA.GOV](http://WWW.SACCOURT.CA.GOV)

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**ALTERNATIVE DISPUTE RESOLUTION  
INFORMATION PACKAGE**

Recognizing that many civil disputes can be resolved without the time and expense of traditional civil litigation, the Superior Court of California, County of Sacramento (Sacramento County Superior Court), strongly encourages parties in civil cases to explore and pursue the use of Alternative Dispute Resolution.

**What is Alternative Dispute Resolution?**

Alternative Dispute Resolution (ADR) is the general term applied to a wide variety of dispute resolution processes which are alternatives to lawsuits. Types of ADR processes include:

- Arbitration
- Mediation
- Settlement Conferences
- Private judging
- Neutral evaluation
- Mini-trials
- Negotiation and *hybrids* of these processes

All ADR processes offer a partial or complete alternative to traditional court litigation for resolving disputes. At the present time, the Sacramento County Superior Court offers Mediation and Arbitration.

**What are the advantages of using ADR?**

ADR can have a number of advantages over traditional court litigation.

- \* **ADR can save time.** Even in a complex case, a dispute can be resolved through ADR in a matter of months or weeks, while a lawsuit can take years.
- \* **ADR can save money.** By producing earlier settlements, ADR can save parties and courts money that might otherwise be spent on litigation costs (attorneys fees and court expenses.)
- \* **ADR provides more participation.** Parties have more opportunity with ADR to express their own interests and concerns, while litigation focuses exclusively on the parties' legal rights and responsibilities.
- \* **ADR provides more control and flexibility.** Parties can choose the ADR process most appropriate for their particular situation and that will best serve their particular needs.
- \* **ADR can reduce stress and provide greater satisfaction.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere found in litigation. Surveys of disputants who have gone through ADR have found that satisfaction with ADR is generally high, especially among those with extensive ADR experience.

**Arbitration and Mediation**

Although there are many different types of ADR processes, the types most commonly used to resolve disputes in California state courts are Arbitration and Mediation. The Sacramento County Superior Court currently offers pre-screened panelists with experience and training in each of the following areas.

**Arbitration.** An Arbitrator hears evidence presented by the parties, makes legal rulings, determines facts and makes an Arbitration award. Arbitration awards may be entered as judgments in accordance with the agreement of the parties or, where there is no agreement, in accordance with California statutes. Arbitration can be binding if the parties so agree in writing. If there is no such agreement, either party can reject the Arbitration award and request a trial.





**Mediation.** Mediation is a voluntary, informal, confidential process in which the Mediator, a neutral third party, facilitates settlement negotiations. The Mediator improves communication by and among the parties, helps parties clarify facts, identify legal issues, explore options and arrive at a mutually acceptable resolution of the dispute.

Litigants are encouraged to use an ADR process as early in the case as circumstances permit. All appropriate cases will be reviewed for referral to ADR at the Case Management Conference(CMC).

#### **ADR Procedures for the Sacramento County Superior Court**

Upon filing a complaint or cross-complaint, the plaintiff/cross-complainant must acquire this information package from the Court's Website, <http://www.saccourt.ca.gov>, or the Superior Court Clerk. Plaintiff is required to include the ADR Information Package when he or she serves the Complaint on the Defendant.

The court's ADR Panel List is available on-line at <http://www.saccourt.ca.gov> or may be obtained at the Civil Filing Counter at the Gordon D. Schaber Sacramento County Courthouse, 720 Ninth Street, Room 101, Sacramento, CA 95814.

#### **Mediation.**

All parties to the dispute may voluntarily agree to submit the case to a neutral Mediator, either through a court-appointment or through a private arrangement. The parties may choose either of the following Mediation choices:

**Private Mediation.** Parties to a civil action agree to mediate their dispute with a Mediator of their choice without court assistance. The cost of Mediation must be borne by the parties equally unless the parties agree otherwise. Parties will be charged an amount as set by the Mediator (refer to the ADR Panel List for current rates).

**Court Mediation.** Upon stipulation of the parties, a Mediator and alternate Mediator will be selected from the court-approved list of neutrals (ADR Panel List). The court will confirm the selected Mediator and notice parties by mail.

The Mediator is then responsible for contacting the parties to confirm a date, time, and place for Mediation. Mediators on the court's approved ADR Panel List have agreed to provide up to three (3) hours of pro-bono Mediation. In the event the Mediation extends beyond 3 hours and parties determine it would be beneficial to continue the Mediation process; the parties will independently be responsible for compensating the Mediator in an amount as set by the Mediator.

#### **UNLIMITED CIVIL CASES**

- A *Stipulation and Order to Mediation – Unlimited Civil Cases*, Form CVE-MED-179 (see attached) may be filed with the court at any time up to 15 calendar days prior to the Case Management Conference.
- If the parties do not stipulate to Mediation prior to their CMC, they may indicate their willingness to stipulate to Mediation at the CMC. In that event, parties must submit a *Stipulation and Order to Mediation – Unlimited Civil Cases* within 14 calendar days after their CMC.
- A *Mediation Statement* must be filed with the *Case Management Statement*.

#### **LIMITED CIVIL CASES**

- Parties may select and conduct voluntary Private Mediation without notification to the Court.
- Parties may stipulate to court mediation by filing a *Stipulation and Order to Arbitration/Mediation - Limited Civil Cases* form (CVE-203) at any time after the filing of the Limited Civil Case Status Memorandum form (CVE-202). This form is located on the court's website at <http://www.saccourt.ca.gov>. A *Stipulation and Order to Arbitration/Mediation – Limited Civil Cases* MUST be filed concurrently or subsequent to a Limited Civil Case Status Memorandum.



## **Arbitration**

### **UNLIMITED CIVIL CASES**

- Plaintiff may elect, the parties may stipulate, or the judge may Order the case to Arbitration. Parties will be asked to select an Arbitrator and three alternate Arbitrators from the court's ADR Panel List. The court will send a Notice of Appointment and an appropriate Order to Arbitration to all parties.
- Arbitrations are conducted pursuant to California Rules of Court, rules 3.810 through 3.830, and Local Rules Chapter 2, Part 5. Unless otherwise stipulated, an Award of Arbitrator is not binding upon the parties provided that they file a timely Request for Trial De Novo pursuant to California Rules of Court, rule 3.826. Upon the filing of a timely Request for Trial De Novo, the case will proceed to a Trial-Setting Conference. If no timely Request for Trial De Novo is filed, judgment based upon the Award of Arbitrator will be entered pursuant to California Rules of Court, rule 3.827.

### **LIMITED CIVIL CASES**

Arbitration may occur in a limited civil case under the following circumstances:

- When all parties stipulate to arbitration pursuant to Code of Civil Procedure section 1141.12. A stipulation for arbitration shall be filed using the Court's local form, Stipulation and Order to Arbitration/Mediation – Limited Civil Cases form (CVE-203). A Stipulation and Order to Arbitration/Mediation – Limited Civil Cases MUST be filed concurrently or subsequent to a Limited Civil Case Status Memorandum form (CVE-202).
- When plaintiff elects to refer the case to judicial arbitration. A written election by the plaintiff to submit an action or proceeding to arbitration shall be filed using the Court's local form, Limited Civil Case Status Memorandum form (CVE-202).

### **Additional Information**

For additional information regarding the Court's ADR program, please go to the Court's website <http://www.saccourt.ca.gov>.



Superior Court of California, County of Sacramento  
720 Ninth Street Sacramento, CA 95814-1380 (916)  
874-5522—Website www.saccourt.ca.gov

# NOTICE AND ORDER OF COMPLEX CASE DETERMINATION

Case Title: Perez v. Sierra Mountain

Case Number: 2020-279284

Having reviewed and considered the pleadings on file, the court orders:



**THE CASE IS DEEMED COMPLEX** and assigned to the Honorable SUE YOSHIDA presiding in Complex Case Management Department 40 for case management pursuant to California Rules of Court 3.750, et seq. The case is also pre-assigned for trial, and any motions for consolidation, severance, bifurcation, intervention and to continue trial shall be heard in such department unless otherwise ordered. This is a limited purpose assignment under California Rule of Court 3.734. Law and motion matters shall be heard in Departments 53/54 per Local Rule 2.30, et seq., unless otherwise directed by the Complex Case Management Department.

This action involves one or more of the following:

- |   |   |
|---|---|
| <input type="checkbox"/> Antitrust or trade regulation claims.                            | <input type="checkbox"/> Claims involving mass torts.   |
| <input type="checkbox"/> Construction defect claims involving many parties or structures. | <input checked="" type="checkbox"/> Claims involving class actions.                               |
| <input type="checkbox"/> Securities claims or investment losses involving many parties.   | <input type="checkbox"/> Insurance coverage claims arising out of any of the claims listed above. |
| <input type="checkbox"/> Environmental or toxic tort claims involving many parties.       |   |

The action is likely to involve:

- |  |  |
|--|--|
| <input type="checkbox"/> Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve. | <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court. |
| <input checked="" type="checkbox"/> Management of a large number of witnesses or a substantial amount of documentary evidence.     | <input type="checkbox"/> Substantial post judgment judicial supervision.   |
| <input type="checkbox"/> Management of a large number of separately represented parties.   | <input type="checkbox"/> Other: _____  |

Government Code section 70616 establishes the fees for complex cases. Pursuant to Government Code section 70616, any non-exempt party who has appeared in this action, but who has not paid the required complex case fee, is ordered to pay the fee to the clerk within ten calendar days of the filing of this order. Failure to pay the required fees shall have the same effect as the failure to pay a filing fee, and shall be subject to the same enforcement and penalties (Cal. Gov. Code § 70616(g)).

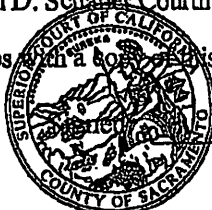


## **THE CASE IS DECLARED NOT COMPLEX**

Any complex case fees that the parties have previously paid pursuant to 70616(a) or (b) shall be reimbursed upon submission of a refund request together with a copy of this minute order by the paying party to the Court's Civil General Civil Processing Unit. It may be submitted by mail or placed in one of the Civil Drop Boxes located in Room 102 and the lobby of the Gordon D. Schaber Courthouse at 720 9th Street, Sacramento CA 95814.

The plaintiff is directed to serve all other parties with a copy of this order.

Date: 6/15/2020



Presiding Judge of the Superior Court RUSSELL L. HORN  
of California, County of Sacramento

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO**

Gordon D Schaber Courthouse  
720 Ninth STREET  
Sacramento, CA 95814-1311

**SHORT TITLE:** Perez vs. Sierra Mountain Express, Inc.

**CLERK'S CERTIFICATE OF SERVICE BY MAIL (Minute Order)**

**CASE NUMBER:**  
**34-2020-00279284-CU-OE-GDS**

I certify that I am not a party to this cause. I certify that a true copy of the Minute Order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Sacramento, California, on 06/17/2020.

Clerk of the Court, by: /s/ C. Clausen, Deputy

WONG  
AEGIS LAW FIRM PC  
9811 IRVINE CENTER DRIVE, SUITE 100  
IRVINE, CA 92618

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**CLERK'S CERTIFICATE OF SERVICE BY MAIL**



Superior Court of California, County of Sacramento  
720 Ninth Street Sacramento, CA 95814-1380 (916)  
874-5522—Website [www.saccourt.ca.gov](http://www.saccourt.ca.gov)

# NOTICE AND ORDER OF COMPLEX CASE DETERMINATION

Case Title: Perez v. Sierra Mountain Case Number: 2020-279284

Having reviewed and considered the pleadings on file, the court orders:

- ☒ **THE CASE IS DEEMED COMPLEX** and assigned to the Honorable SUE YOSHIDA presiding in Complex Case Management Department 40 for case management pursuant to California Rules of Court 3.750, et seq. The case is also pre-assigned for trial, and any motions for consolidation, severance, bifurcation, intervention and to continue trial shall be heard in such department unless otherwise ordered. This is a limited purpose assignment under California Rule of Court 3.734. Law and motion matters shall be heard in Departments 53/54 per Local Rule 2.30, et seq., unless otherwise directed by the Complex Case Management Department.

This action involves one or more of the following:

- |   |   |
|---|---|
| <input type="checkbox"/> Antitrust or trade regulation claims.                            | <input type="checkbox"/> Claims involving mass torts.   |
| <input type="checkbox"/> Construction defect claims involving many parties or structures. | <input checked="" type="checkbox"/> Claims involving class actions.                               |
| <input type="checkbox"/> Securities claims or investment losses involving many parties.   | <input type="checkbox"/> Insurance coverage claims arising out of any of the claims listed above. |
| <input type="checkbox"/> Environmental or toxic tort claims involving many parties.       |   |

The action is likely to involve:

- |  |  |
|--|--|
| <input type="checkbox"/> Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve. | <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court. |
| <input checked="" type="checkbox"/> Management of a large number of witnesses or a substantial amount of documentary evidence.     | <input type="checkbox"/> Substantial post judgment judicial supervision.   |
| <input type="checkbox"/> Management of a large number of separately represented parties.   | <input type="checkbox"/> Other: _____  |

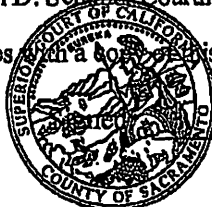
Government Code section 70616 establishes the fees for complex cases. Pursuant to Government Code section 70616, any non-exempt party who has appeared in this action, but who has not paid the required complex case fee, is ordered to pay the fee to the clerk within ten calendar days of the filing of this order. Failure to pay the required fees shall have the same effect as the failure to pay a filing fee, and shall be subject to the same enforcement and penalties (Cal. Gov. Code § 70616(g)).

☐ **THE CASE IS DECLARED NOT COMPLEX**

Any complex case fees that the parties have previously paid pursuant to 70616(a) or (b) shall be reimbursed upon submission of a refund request together with a copy of this minute order by the paying party to the Court's Civil General Civil Processing Unit. It may be submitted by mail or placed in one of the Civil Drop Boxes located in Room 102 and the lobby of the Gordon D. Schaber Courthouse at 720 9th Street, Sacramento CA 95814.

The plaintiff is directed to serve all other parties with a copy of this order.

Date: 6/15/2020



RUSSELL L. HORN  
Presiding Judge of the Superior Court of California, County of Sacramento

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO</b> Gordon D Schaber Courthouse 720 Ninth STREET Sacramento, CA 95814-1311	
<b>SHORT TITLE:</b> Perez vs. Sierra Mountain Express, Inc.	
<b>CLERK'S CERTIFICATE OF SERVICE BY MAIL (Minute Order)</b>	<b>CASE NUMBER:</b> 34-2020-00279284-CU-OE-GDS

I certify that I am not a party to this cause. I certify that a true copy of the Minute Order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Sacramento, California, on 06/17/2020.

Clerk of the Court, by: /s/ C. Clausen, Deputy

WONG  
AEGIS LAW FIRM PC  
9811 IRVINE CENTER DRIVE, SUITE 100  
IRVINE, CA 92618

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**CLERK'S CERTIFICATE OF SERVICE BY MAIL**



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO  
720 9th Street, Room 101  
Sacramento, CA 95814-1302  
[www.saccourt.ca.gov](http://www.saccourt.ca.gov)

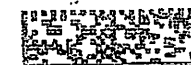
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06/17/2020

US POSTAGE

\$000.46<sup>0</sup>



ZIP 95814  
041L11258068

SW  
JK

Jessica L. Campbell Esq.  
AEGIS LAW FIRM P.C.  
9811 Irvine Center Drive, Suite 100  
Irvine, CA 92618





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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Jessica L. Campbell, Esq. SBN 280626</b> <b>AEGIS LAW FIRM, P.C.</b> <b>9811 Irvine Center Drive, Suite 100</b> <b>Irvine, CA 92618</b> TELEPHONE NO.: <b>949.379.6250</b> FAX NO.: <b>949.379.6251</b> ATTORNEY FOR (Name): <b>Plaintiff Sigifredo Perez Jr.</b>		<b>FOR COURT USE ONLY</b> <div style="border: 2px solid black; padding: 10px; margin: 10px auto; width: 150px;"> <b>FILED/ENDORSED</b>  <b>MAY 21 2020</b> </div> By: <u><b>R. Gomez</b></u> <b>Deputy Clerk</b>	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>Sacramento</b> STREET ADDRESS: <b>720 Ninth Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Sacramento, CA 95814</b> BRANCH NAME: <b>Gordon D. Shaber Courthouse</b>		CASE NUMBER: <b>34-2020-00279284</b> JUDGE: DEPT:	
CASE NAME: <b>Perez v. Sierra Mountain Express, Inc., et al.</b>			
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |   |
|--|---|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|---|
3. Remedies sought (check all that apply): a. ☒ monetary    b. ☐ nonmonetary; declaratory or injunctive relief    c. ☐ punitive
4. Number of causes of action (specify): **Eleven**
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 21, 2020  
 Jessica L. Campbell

(TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

BY FAX

CM-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiff and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

**Auto Tort**  
Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

**Other PIP/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**  
Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or asbestos-related) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PIP/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PIP/PD/WD

**Non-PIP/PD/WD (Other) Tort**  
Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (not medical or legal)  
Other Non-PIP/PD/WD Tort (35)  
Employment  
Wrongful Termination (36)  
Other Employment (15)

**Contract**  
Breach of Contract/Warranty (06)  
Breach of Rental Lease  
Contract (not unlawful detainer or wrongful eviction)  
Contract/Warranty Breach—Defendant Plaintiff (not fraud or negligence)  
Negligent Breach of Contract  
Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Defendant Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (not provisionally complex) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

**Real Property**  
Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)  
Unlawful Detainer  
Commercial (31)  
Residential (32)  
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)  
Judicial Review  
Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**  
Arbitration/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)  
Enforcement of Judgment  
Enforcement of Judgment (Out of County)  
Confession of Judgment (non-domestic relations)  
State State Judgment  
Administrative Agency Award (not unpaid taxes)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**  
RICO (27)  
Other Complaint (not specified above) (42)  
Declaratory Relief Only  
Injunctive Relief Only (non-harassment)  
Mechanics Lien  
Other Commercial Complaint Case (non-tort/non-complex)  
Other Civil Complaint (non-tort/non-complex)  
Miscellaneous Civil Petition  
Partnership and Corporate Governance (21)  
Other Petition (not specified above) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: R. Scott Brink; James M. Neudecker; Taylor N. Burras FIRM NAME: Jeffer Mangels Butler & Mitchell LLP STREET ADDRESS: 1900 Avenue of the Stars, 7 <sup>th</sup> Floor CITY: Los Angeles TELEPHONE NO.: (310) 203-8080 E-MAIL ADDRESS: rsb@jmbm.com; j1n@jmbm.com; tnb@jmbm.com ATTORNEY FOR (Name): Defendant Sierra Mountain Express, Inc.	STATE BAR NO: 138644; 221657; 279744 FOR COURT USE ONLY <div style="border: 2px solid black; padding: 10px; margin: 10px auto; width: 80%;"> <b>FILED / ENDORSED</b>  <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 60%;">             AUG 10 2020           </div>             By J. Gable, Deputy Clerk           </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 Ninth Street MAILING ADDRESS: 720 Ninth Street CITY AND ZIP CODE: Sacramento, CA 95814 BRANCH NAME: Gordon D. Schaber Sacramento County Courthouse	
PLAINTIFF/PETITIONER: Sigifredo Perez Jr. DEFENDANT/RESPONDENT: Sierra Mountain Express, Inc.	
<b>DECLARATION OF DEMURRING OR MOVING PARTY IN SUPPORT OF AUTOMATIC EXTENSION</b>	CASE NUMBER: <b>34-2020-00279284</b>

1. (Name of party): Defendant Sierra Mountain Express, Inc. was served with

- ☒ a complaint
 ☐ an amended complaint
 ☐ a cross-complaint  
☐ an answer
 ☐ other (specify):

in the above-titled action.

2. For a demurrer or motion to strike, a responsive pleading is due on (date): August 13, 2020

#### DECLARATION

I intend to file a demurrer, motion to strike, or motion for judgment on the pleadings in this action. Before I can do so, I am required to meet and confer with the party who filed the pleading that I am responding to at least five days before the date when the responsive pleading is due (if I am filing a demurrer or motion to strike) and at least five days before the last day a motion for judgment on the pleadings may be filed (if I am filing a motion for judgment on the pleadings). We have not been able to meet and confer. I have not previously requested an automatic extension of time. Therefore, on timely filing and serving a declaration that meets the requirements of Code of Civil Procedure sections 430.41, 435.5, or 439, I am entitled to an automatic 30-day extension of time within which to file a responsive pleading or motion for judgment on the pleadings.

I made a good faith attempt to meet and confer with the party who filed the pleading at least five days before the date the responsive pleading was due (if I am filing a demurrer or motion to strike) and at least five days before the last day a motion for judgment on the pleadings may be filed (if I am filing a motion for judgment on the pleadings). I was unable to meet with that party because (the reasons why the parties could not meet and confer are stated):

- ☒ below
 ☐ on form MC-031, Attached Declaration

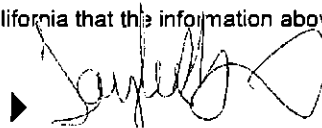
1. On August 6, 2020, I emailed Plaintiff's counsel to initiate a meet and confer pursuant to CCP § 430.41 regarding Defendant Sierra Mountain Express, Inc.'s intent to demur to certain claims asserted in the Complaint. In that email, I requested a 15-day extension for Defendant to respond to the Complaint to give the parties additional time to fully meet and confer on the issues. I did not receive any response that day.
2. On August 7, 2020, I called Plaintiff's counsel's office. Counsel was unavailable, so I left a message requesting a return call. I did not receive a response. I followed up with Plaintiff's counsel by email, advising counsel that I had not received a response to my initial email or request for a return call. I further informed counsel that, because I did not receive a response from counsel, Defendant would have an automatic 30-day extension to respond to the Complaint pursuant to CCP § 430.41(a)(2). I additionally requested counsel's availability to meet and confer during the week of August 10, 2020.
3. On the evening of August 7, I finally received an email from Plaintiff's counsel indicating availability to meet and confer on August 11 or 13, 2020. As of the filing of this declaration, we are still in the process of scheduling a time to do so.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: August 10, 2020

Taylor N. Burras

(NAME OF PARTY OR ATTORNEY FOR PARTY)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

Attorney for Defendant Sierra Mountain Express, Inc.

**PROOF OF SERVICE**

***Sigifredo Perez Jr. v. Sierra Mountain Express, Inc.***  
**34-2020-00279284**

**STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is Two Embarcadero Center, 5th Floor, San Francisco, CA 94111-3813.

On August 10, 2020, I served true copies of the following document(s) described as

**DECLARATION OF DEMURRING OR MOVING PARTY IN SUPPORT OF  
AUTOMATIC EXTENSION**

as follows:

**Jessica L. Campbell  
AEGIS LAW FIRM, PC  
9811 Irvine Center Drive, #100  
Irvine, CA 92618**

*Attorney for Plaintiff*

**[X] BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Jeffer Mangels Butler & Mitchell LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 10, 2020, at San Francisco, California.

  
Alyssa Weatherford